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Attorneys for Plaintiff JORGE AGUILAR
on behalf of the general public as private attorney general

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA**

JORGE AGUILAR, on behalf of the general
public as private attorney general,

Plaintiffs,

v.

PITCO FOODS, a California Corporation;
PACIFIC GROVESERVICE INC., a California
Corporation, and DOES 1-50, inclusive,

Defendants.

Case No.
ASSIGNED FOR ALL PURPOSES TO:
JUDGE:
DEPT:

**PAGA REPRESENTATIVE ACTION
COMPLAINT PURSUANT TO THE
PRIVATE ATTORNEYS GENERAL ACT
(Labor Code §§ 2698 *et seq*).**

COMES NOW Plaintiff JORGE AGUILAR (“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 PITCO FOODS and PACIFIC GROVESERVICE 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) failing to pay wages including overtime, (b) failing to pay all wages earned and owed upon separation from Defendant’s employ, and (c) failing to provide accurate itemized wage statements. 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 California Courts consistent with traditional notions of fair play and substantial justice.

5. Venue as to each Defendant is proper in this judicial district pursuant to Code of Civil Procedure section 395. Defendants are doing business throughout California, including but

1 not limited to Alameda County, and each Defendant is within the jurisdiction of this Court for
2 service of process purposes. The unlawful acts alleged herein have a direct effect on Plaintiff and
3 all other aggrieved employees within the State of California. Defendants employ numerous
4 aggrieved employees in in the State of California.

5 6. On information and belief, Defendants have conducted business within the State of
6 California during the purported liability period and continue to conduct business throughout the
7 State of California. The unlawful acts alleged herein have had a direct effect on Plaintiff, and the
8 similarly situated non-exempt aggrieved employees within California.

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

14 8. On information and belief, during the statutory liability period and continuing to
15 the present ("liability period"), Defendant consistently maintained and enforced against
16 Defendant's Non-Exempt Aggrieved Employees, among others, the following unlawful practices
17 and policies, in violation of California state wage and hour laws: (a) failing to pay wages including
18 overtime, (b) failing to pay all wages earned and owed upon separation from Defendant's employ,
19 and (c) failing to provide accurate itemized wage statements.
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21 9. On information and belief, during the statutory liability period and continuing to
22 the present, Defendants have had a consistent policy of failing to pay wages including overtime
23 wages for hours worked while subject to the control of Defendants.

24 10. On information and belief, during the statutory liability period and continuing to
25 the present, Defendants have had a consistent policy of failing to timely pay wages upon
26 separation.

27 11. On information and belief, during the statutory liability period and continuing to
28 the present, Defendants have failed to provide Plaintiff and aggrieved employees accurate itemized

1 wage statements.

2 12. Plaintiff on behalf of the general public as private attorney general and all other
3 aggrieved employees bring this action pursuant to Labor Code 2698, et. seq. for violations
4 enumerated under 2699.5 as follows: sections 201-203, 510, 558, 226, 226.3, 1174, 1174.5, 1175,
5 1194, 1197, 1197.1, 1198, and seeking penalties, interest, attorneys' fees and costs.

6 **III. PARTIES**

7 **A. Plaintiff**

8 13. Plaintiff, JORGE AGUILAR, was at all times relevant to this action, a resident of
9 California. Plaintiff was employed by Defendants in approximately August 2018 as a Non-Exempt
10 Employee and worked during the liability period for Defendants' as a driver, until his separation
11 from Defendants' employ in approximately October 2020.

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

- 14 a) perform work subject to the control of the employer without being compensated all
15 wages including overtime, all in violation of California labor laws, regulations, and the
16 Industrial Welfare Commission Wage Order ("IWC");
- 17 b) not paid wages upon termination; and
- 18 c) not provided accurate wage statements.

19 15. On information and belief, Defendants willfully failed to pay all earned wages in
20 the form regular wages and overtime wages, to its Non-Exempt Employees and members of the
21 Representative Group; nor have Defendants returned to Plaintiff or members of the
22 Representative Group, upon or after separation from employment with Defendants, all wages
23 earned and owing. Plaintiff seeks penalties under Labor Code 2698, et. seq. on behalf of the
24 general public as private attorney general and all other aggrieved employees..

25 **B. Defendants**

26 16. Defendants PITCO FOODS and PACIFIC GROVESERVICE INC., operates as a
27 grocery product supplier and distributor and provides services to various retail stores across
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1 California. Defendants' maintain various warehouse locations in California include in San Jose,
2 Oakland, San Francisco, and Sacramento. Plaintiff estimates there are in excess of 100 Non-
3 Exempt Employees who work or have worked for Defendants over the last year.

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

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

17 **IV. GENERAL ALLEGATIONS**

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

20 20. Plaintiff is informed and believes Class Members have at all times pertinent hereto
21 been Non-Exempt within the meaning of the California Labor Code and the implementing rules
22 and regulations of the IWC California Wage Orders.

23 21. Plaintiff believes that all Class Members are citizens of the state of California.

24 22. Defendants continue to employ Non-Exempt Employees, however titled, in
25 California and implement a uniform set of policies and practices to all non-exempt employees, as
26 they were all engaged in the generic job duties of providing grocery supply and distribution
27 services.
28

1 23. Plaintiff is informed and believes, and thereon alleges, that Defendants are and were
2 advised by skilled lawyers and other professionals, employees, and advisors with knowledge of
3 the requirements of California's wage and employment laws.

4 24. During the relevant time frame, Defendants compensated Plaintiff and Class
5 Members based upon an hourly rate.

6 25. On information and belief, during the relevant time frame, Plaintiff and Class
7 Members frequently worked well over eight (8) hours in a day and forty (40) hours in a work week.
8 Plaintiff and Class Members were typically scheduled to work 11-12 hour shifts.

9 26. Plaintiff is informed and believes that Plaintiff and Class Members were not
10 compensated for all time worked as Plaintiff and Class Members as a result of off-the-clock work
11 performed while attending orientation, job training, or employee meetings. This resulted in a
12 disproportionate underpayment of minimum and overtime wages.

13 27. During the liability period, Defendants failed to accurately pay overtime wages to
14 Plaintiff and Class Members as Defendants failed to incorporate bonuses and other remunerations
15 into Plaintiff's and Class Members' regular rate for overtime calculation purposes.

16 28. Defendants also failed to provide accurate, lawful itemized wage statements to
17 Plaintiff and the Class Members in part because of the above specified violations. In addition, upon
18 information and belief, Defendants omitted an accurate itemization of total hours worked, gross
19 pay and net pay figures from Plaintiff and the Class Members' wage statements.

20 29. 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 Class Members for all wages owed including minimum wages and
24 overtime wages, 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 30. Upon information and belief, Defendants knew and or should have known that it is
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improper to implement policies and commit unlawful acts such as:

- (a) failing to pay Plaintiff and Class Members for all wages including overtime wages owed;
- (b) failing to timely pay Plaintiff and Class Members;
- (c) failing to provide accurate itemized wage statements; and
- (d) conducting and engaging in unfair business practices.

31. Upon information and belief, Defendants failed to keep accurate records pursuant to Labor Code § 1174.5.

32. 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.

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

34. On March 30, 2021 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.

35. Plaintiff is an aggrieved employee as defined in Labor Code Section 2699(a). Plaintiff brings this cause of action on behalf of all current and former California Non-Exempt Employees of Defendants.

1 36. Pursuant to Labor Code section 2699(a) Plaintiff seek to recover civil penalties for
2 which Defendants are liable due to numerous Labor Code violations as set forth in this Complaint,
3 including without limitation Labor Code section 201-203, 226, 226.3, 510, 558, 1174, 1174.5,
4 1175, 1194, 1197, 1197.1, and, 2698 *et seq.*, applicable IWC Wage Orders and California Code of
5 Regulations, Title 8, section 11000 *et. seq.*

6 37. At all times relevant, Plaintiff and all other aggrieved employees regularly
7 performed non-exempt work in excess of 50% of the time.

8 38. Defendants violated Labor Code sections 200, 510, 1194, and 1197, by failing to
9 accurately pay minimum and overtime wages owed as Defendants failed to compensate Plaintiff
10 and Aggrieved Employees for time attending orientation, job training, and employee meetings.
11 Defendants also failed to incorporate bonuses and other remunerations into Plaintiff's and Class
12 Members' regular rate of pay for overtime calculation purposes. Therefore, Defendants violated
13 section 510, and 1194 by not compensating its Non-Exempt Employees for work performed in
14 excess of eight hours (8) in a day or forty hours in a work week (40). Section 510 of the Labor
15 Code codifies the right to overtime compensation at the rate of one and one-half times the regular
16 rate of pay for all hours worked in excess of eight (8) hours in a day or forty (40) hours in a work
17 week and to overtime compensation twice the regular rate of pay for hours worked in excess of
18 twelve (12) hours in a day or in excess of eight (8) hours in a day on the seventh day of work in a
19 particular work week.
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21 39. Defendants also willfully violated Labor Code sections 201-203 by failing to
22 provide all owed wages at separation from employment. Labor Code sections 201 and 202 require
23 Defendants to pay their employees all wages due either at time of firing, or within seventy-two
24 (72) hours of voluntary separation, if not sooner. Section 203 of the Labor Code provides that if
25 an employer willfully fails to timely pay such wages the employer must, as a penalty, continue to
26 pay the subject employee's wages until the back wages are paid in full or an action is commenced.
27 The penalty cannot exceed 30 days of wages.

28 40. Plaintiff and all other aggrieved employees who were separated from employment

1 are entitled to compensation for all forms of wages earned, including but not limited to
2 compensation minimum and overtime wages, but to date have not received such compensation,
3 therefore entitling them to penalties under PAGA for violations of Labor Code sections 201-203.

4 41. On information and belief, Defendants willfully failed to pay all wages due and
5 owing upon separation from employment. These wages include minimum and overtime wages.

6 42. On information and belief, Defendants failed to provide accurate itemized wage
7 statements which failed to include all hours worked, failed to accurately account for minimum and
8 overtime wages due and owing to Plaintiff and the aggrieved employees, and the address of the
9 legal entity that is the employer pursuant to Labor Code section 226(a).

10 43. Pursuant to Labor Code section 226.3, any employer who violates subdivision (a)
11 of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250)
12 per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee
13 for each violation in a subsequent citation, for which the employer fails to provide the employee a
14 wage deduction statement or fails to keep the records required in subdivision (a) of Section 226.

15 44. Additionally, Defendants have no accurate records relating to aggrieved
16 employees' work periods, total daily hours worked, total hours worked per payroll period and
17 applicable pay rates, in violation of Wage Order. Similarly, Defendants failed to maintain accurate
18 records relating to hours worked daily in violation of Labor Code sections 1174(d), 1174.5.

19 45. As a result of Defendants' unlawful conduct, Plaintiff and Aggrieved employees
20 are entitled to penalties to the extent they were not paid at the prevailing wage rate for all hours
21 worked.

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

24
25 **PRAYER FOR RELIEF**

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

- 27 1. For penalties according to proof, pursuant to Labor Code §§ 2698 et seq.;
- 28 2. For reasonable attorneys' fees and costs; and

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3. For such other and further relief as the Court deems proper.

Dated: March 30, 2021

JAMES HAWKINS APLC

By: _____
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