

FILED
Superior Court Of California,
Sacramento
12/21/2021
reanmiguel
By _____, Deputy
Case Number:
34-2021-00306609

1 Galen T. Shimoda (Cal. State Bar No. 226752)
2 Justin P. Rodriguez (Cal. State Bar No. 278275)
3 Brittany V. Berzin (Cal. State Bar No. 325121)
4 **Shimoda Law Corp.**
5 9401 East Stockton Boulevard, Suite 120
6 Elk Grove, CA 95624
7 Telephone: (916) 525-0716
8 Facsimile: (916) 760-3733

9 Attorneys for Plaintiff JAIME MUNOZ

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO**

JAIME MUNOZ,

Plaintiff,

vs.

WILMOR AND SONS PLUMBING AND
CONSTRUCTION, a California Corporation;
and DOES 1 to 100, inclusive,

Defendants.

Case No.: 34-2021-00306609

**FIRST AMENDED COMPLAINT FOR CIVIL
PENALTIES:**

1. Private Attorneys General Act

1 Plaintiff JAIME MUNOZ ("Plaintiff") hereby files this Complaint against Defendants
2 WILMOR AND SONS PLUMBING AND CONSTRUCTION, a California Corporation; and DOES
3 1 to 100, inclusive (hereinafter all collectively referred to as "Defendants"). On information and
4 belief, Plaintiff allege the following:

5 INTRODUCTION

6 1. This is a Private Attorneys General Act ("PAGA") lawsuit brought by Plaintiff based on
7 the following violations of the California Labor Code: failure to pay overtime wages, failure to pay
8 minimum wages, failure to provide meal periods and rest periods or pay premiums in lieu thereof,
9 failure to provide accurate wage statements, failure to pay final wages, failure to pay reimbursements for
10 expenses, violations of provisions regulating hours and days of work, failure to maintain accurate
11 records, failure to pay all sick time owed, and untimely payment of wages.

12 JURISDICTION AND VENUE

13 2. The Sacramento County Superior Court has jurisdiction in this matter pursuant to
14 California Code of Civil Procedure section 410.10 to determine alleged violations of the California
15 Labor Code and Wage Order No. 16.

16 3. Venue is proper pursuant to Civil Procedure Code §§ 395(a) and 395.5, in that
17 Defendants reside in Sacramento County. In addition, some of the wrongful acts and violations of law
18 asserted herein occurred within Sacramento County, and Defendants' obligation to pay wages arose in
19 Sacramento County pursuant to *Madera Police Officers Assn. v. City of Madera*, 36 Cal.3d 403, 414
20 (1984).

21 4. Plaintiff has sought permission pursuant to California Labor Code section 2699 *et seq.* to
22 pursue the claims set forth in this Complaint against Defendants as a Private Attorney General on behalf
23 of himself and other similarly situated employees. Pursuant to California Labor Code section 2699.3,
24 Plaintiff gave written notice via online submission to the Labor and Workforce Development Agency
25 ("LWDA") on approximately May 24, 2021 and August 19, 2021. Plaintiff provided facts and legal
26 bases for his claims within the notice to the LWDA on all violations asserted under the Private
27 Attorneys General Act cause of action. Plaintiff also submitted the \$75.00 filing fee. The notices were
28 also sent via certified mail to Defendants on the same day. To date, the LWDA has not provided any

1 response to Plaintiff's notice correspondences. Accordingly, Plaintiff has exhausted all administrative
2 remedies pursuant to the Private Attorneys General Act ("PAGA") and may bring this action on behalf
3 of himself and all similarly situated employees. *See* Cal. Lab. Code § 2699.3(a)(2)(A), (c)(3); *Caliber*
4 *Bodyworks, Inc., v. Sup. Ct.*, 134 Cal. App. 4th 365, 383 n.18, 385 n.19 (2005).

5 **PARTIES**

6 5. JAIME MUNOZ is an individual over the age of eighteen (18) and is a resident of the
7 State of California.

8 6. On information and belief, Plaintiff alleges, WILMOR AND SONS PLUMBING
9 AND CONSTRUCTION is now and/or at all times mentioned in this Complaint was a California
10 Corporation and the owner and operator of an industry, business and/or facility doing business in the
11 State of California.

12 7. Defendants DOES 1 through 100 are affiliates, subsidiaries and related entities and the
13 alter egos of each of the other Defendants named herein, corporate or otherwise, who participated in and
14 are liable for the actions herein alleged. Plaintiff will seek to amend this Complaint to allege the true
15 names and capacities of these DOE Defendants when they are ascertained. At all times mentioned
16 herein, each Defendant was the agent or employee of each of the other Defendants and was acting within
17 the course and scope of such agency or employment. The Defendants are jointly and severally liable to
18 Plaintiff.

19 8. At all times mentioned herein, each Defendant was the agent or employee of each of the
20 other Defendants and was acting within the course and scope of such agency or employment. The
21 Defendants are jointly and severally liable to Plaintiff.

22 9. Defendants, and each of them, are now and/or at all times mentioned in this Complaint
23 were members of and/or engaged in a joint employment, joint venture, partnership and common
24 enterprise, and were acting within the course and scope of, and in pursuance of said joint employment,
25 joint venture, partnership and common enterprise.

26 10. Defendants, and each of them, now and/or at all times mentioned in this Complaint
27 approved, ratified, acquiesced, aided or abetted the acts and omissions alleged in this Complaint.
28

11. Defendants' proximately caused Plaintiff to be subjected to the unlawful practices, wrongs, complaints, injuries and/or damages alleged in this Complaint.

GENERAL ALLEGATIONS

12. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 12 as though fully set forth herein.

13. Plaintiff worked for Defendants from approximately January 21, 2019 to January 22, 2021 as an hourly, non-exempt employee. Plaintiff and similarly situated employees were not fully compensated due to Defendants' multiple Labor Code violations.

14. Plaintiff and similarly situated employees were required to arrive at Defendants' headquarters prior to departing to the first job site of the day. However, Plaintiff and similarly situated employees did not clock in for the start or end of their shifts, nor did they clock in and out for meal breaks.

15. Plaintiff and similarly situated employees were not compensated for the time spent in transit to and from job sites originating from Defendants' headquarters. Further, there were times that Plaintiff and similarly situated employees worked without receiving wages because of Defendants' failure to account for hours worked. Plaintiff and similarly situated employees are owed unpaid overtime and regular wages for these hours in transit and for hours worked.

16. Defendants paid Plaintiff and similarly situated employees different rates of pay according to the jobs they completed. Defendants also paid a per diem and bonuses to Plaintiff and similarly situated employees. Defendants failed to pay the proper overtime rate as two different rates of pay were used at times to pay Plaintiff and similarly situated employees. Further, Defendants failed to incorporate the per diem and bonuses into the regular rate of pay for purposes of overtime and sick leave.

17. Defendants did not provide Plaintiff and similarly situated employees with the required thirty (30) minute lunch break every five hours of work completed. Defendants only permitted lunch breaks when it was convenient and often occurred well past five (5) hours of work. Plaintiff and similarly situated employees never received second or third lunch breaks when working in excess of ten (10) hours or twelve (12) hours in a day. Defendants have no policy of tracking and calculating when

1 and for how long meal breaks are taken. Due to Defendants refusal to properly account for missed or
2 delayed meal periods, Plaintiff and similarly situated employees are owed meal period premiums.

3 18. Defendants did not provide Plaintiff and similarly situated employees with the required
4 opportunity for rest breaks. Plaintiff and similarly situated employees were deprived of their right to ten
5 (10) minute rest breaks for each four (4) hours of work completed. Defendants only provided rest
6 breaks on rare occasions when temperatures at worksites were at extreme levels. Plaintiff and similarly
7 situated employees are owed compensation for their missed rest breaks.

8 19. When Plaintiff and similarly situated employees were unable to arrive at Defendants'
9 headquarters at the required time before being compensated, they were forced to use their own personal
10 means of transportation to get to job sites. Since Defendants have no policy of reimbursement for
11 transportation, Plaintiff and similarly situated employees were required to pay their own gas and
12 maintenance costs associated with the use of their vehicles. Plaintiff and similarly situated employees
13 are owed reimbursement for the work-related use of their personal vehicles.

14 20. Plaintiff and similarly situated employees were also required to use their personal
15 cellphones without reimbursement. Defendants coordinated arrival times and job site locations by
16 sending messages and calling Plaintiff and similarly situated employees on their personal cellphone.
17 While at job sites and on duty, Defendants contacted Plaintiff and similarly situated employees to
18 instruct them on logistical matters and work duties. Defendants have no policy of reimbursement for the
19 work-related usage of employees' personal cellphones. Plaintiff and similarly situated employees are
20 owed unpaid reimbursement for work-related use of their personal cellphones.

21 21. Defendants failed to provide Plaintiff and similarly situated employees with accurate
22 wage statements. Defendants failed to account for proper hourly rates of overtime and missed or
23 delayed meal period premiums. Defendants also improperly rounded Plaintiff's and similarly situated
24 employees' hourly wages for Defendants' benefit. Since Defendant has no established policy of
25 clocking in and out, Plaintiff and similarly were subjected to an estimation of hours established and
26 entered by Defendant. The paystubs distributed also fail to show the correct rates of pay for overtime
27 and sick leave.

22. At the time of Plaintiff's and similarly situated employees' termination and/or separation, Plaintiff and similarly situated employees had regular and overtime and minimum wages owed to them, meal and rest period premiums, and paid sick time according to the regular rate of pay. To date, Defendants have not paid to Plaintiff and similarly situated employees these unpaid wages.

CAUSES OF ACTION
FIRST CAUSE OF ACTION
PRIVATE ATTORNEYS GENERAL ACT
(As to Defendants)

23. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 22 as though fully set forth herein.

24. Plaintiff has alleged to the Labor Commissioner that Defendants have violated the following provisions of the Labor Code in their dealings with Plaintiff and other similarly situated current and former employees:

- Violation of Labor Code §§ 510, 1194; IWC Wage Order 16, § 3 (Failure to Pay Overtime Wages)
- Violation of Labor Code §§ 1194, 1197.1; IWC Wage Order 16, § 4 (Failure to Pay Minimum Wages)
- Violation of Labor Code §§ 226.7, 512 and Wage Order No. 16, §§ 11(A) and 11(B) (Failure to Provide Meal Periods or Pay Premiums in Lieu Thereof)
- Violation of Labor Code § 226.7 and Wage Order No. 16, § 12(A) (Failure to Provide Rest Periods or Pay Premiums in Lieu Thereof)
- Violation of Labor Code §§ 226, 226.3 (Failure to Provide Accurate Wage Statements)
- Violation of Labor Code §§ 201-203, 256 (Failure to Pay Final Wages)
- Violation of Labor Code § 2802 (Failure to Pay Reimbursements for Expenses)
- Violation of Labor Code §§ 558, 558.1 (Provisions Regulating Hours and Days of Work in Any Industrial Welfare Commission Order)
- Violation of Labor Code §§ 226.3, 1174 (Failure to Maintain Accurate Records)
- Violation of Labor Code §§ 204, 210 (Untimely Payment of Wages)
- Violation of Labor Code §§ 246, 246.5, 248.5 (Failure to Provide Paid Sick Leave)

25. Plaintiff seeks civil penalties against Defendants as provided in the California Labor Code, or, if no civil penalty is provided, default penalties pursuant to California Labor Code section 2699(f)(2).

26. Plaintiff seeks these civil penalties from Defendants pursuant to California Labor Code sections 2699(a) and 2699.3.

27. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to the extent pertinent as if set forth here in full.

DAMAGES

WHEREFORE Plaintiff requests relief as follows:

1. As to the First Cause of Action:

- a. For civil penalties as provided for in the Labor Code for each enumerated violation;
- b. For those Labor Code sections, the violation of which there is no civil penalty provided, the default penalty provided in Labor Code section 2699(f): for any initial violation, one hundred dollars (\$100) for each aggrieved employee per pay period; For any subsequent violation, two hundred dollars (\$200) for each aggrieved employee per pay period;
- c. Reasonable attorney's fees and costs pursuant to Labor Code section 2699; and
- d. For any other remedies as allowed by law and/or deemed appropriate by the Court.

Dated: December 20, 2021

Shimoda Law Corp.

By:

Galen T. Shinoda
Justin P. Rodriguez
Brittany V. Berzin
Attorneys for Plaintiff

1 *Munoz v. Wilmor and Sons Plumbing and Construction, Inc.*
2 *Sacramento County Superior Court of California 34-2021-00306609*

3 **PROOF OF SERVICE — CCP §§ 1013a and 2015.5**
4 **and California Rules of Court, Rule 1.21 and Rule 2.150**

5 I, Erika F. Collazo, declare that:

6 I am a citizen of the United States and am over the age of eighteen years and not a
7 party to the within above-entitled action.

8 On December 20, 2021, I served the following documents on the party below:

- 9 • First Amended Complaint for Civil Penalties

10 Carrie E. Bushman (SBN: 186130) 11 Alexis Gabrielson (SBN: 298738) 12 Cook Brown LLP 13 2407 J Street, Second Floor 14 Sacramento, California 95816 15 Phone: (916) 442-3100 16 Fax: (916) 442-4227 17 Email: cbushman@cookbrown.com 18 agabrielson@cookbrown.com	
---	--

19 [XXX] [By Mail] I am familiar with my employer's practice for the
20 collection and processing of correspondence for mailing with the
21 United States Postal Service and that each day's mail is deposited
22 with the United States Postal Service that same day in the ordinary
23 course of business. On the date set forth above, I served the
24 aforementioned document(s) on the parties in said action by
25 placing a true copy thereof enclosed in a sealed envelope with
26 postage thereon fully prepaid, for collection and mailing on this
27 date, following ordinary business practices, at Elk Grove,
28 California, addressed as set forth above.

29 [] [By Personal Service] By personally delivering a true copy thereof
30 to the office of the addressee above.

31 [] [By Electronic Mail] I e-mailed the documents(s) to the person(s)
32 shown above. No error was reported by the e-mail service that I
33 used.

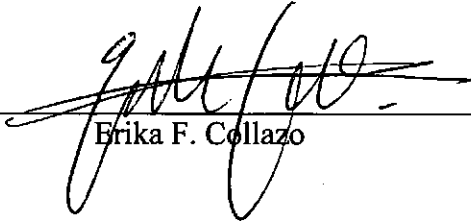
34 [] [By Overnight Courier] By causing a true copy and/or original
35 thereof to be personally delivered via the following overnight
36 courier service: _____.

37 //

38 //

39 //

1 I declare under penalty of perjury under the laws of the State of California that the
2 foregoing is true and correct, and that this declaration was executed on December 20, 2021,
3 at Elk Grove, California.
4


Erika F. Collazo

5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28