

FILED
 Superior Court Of California,
 Sacramento
 01/26/2022
 lbaldwin1
 By _____, Deputy
 Case Number:
 34-2022-00314556

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 on behalf of himself and similarly situated employees,

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

MATTHEW GERSUK, on behalf of himself
 and similarly situated employees,

Plaintiff,

vs.

RS&I, INC., an Idaho Corporation; and
 DOES 1 to 100, inclusive,

Defendants.

Case No.

COMPLAINT FOR DAMAGES:

**1. Private Attorneys General Act Claims
 (Labor Code § 2699 *et seq.*)**

DEMAND FOR JURY TRIAL

Plaintiff MATTHEW GERSUK ("Plaintiff") hereby files this Complaint against Defendants RS&I, INC, an Idaho Corporation; and DOES 1 to 100, inclusive (hereinafter all collectively referred to as "Defendants"). On information and belief, Plaintiff allege the following:

INTRODUCTION

1. Plaintiff has brought this lawsuit on behalf of himself and similarly situated employees because of Defendants' failure to pay overtime wages, failure to pay minimum wages, failure to provide meal periods or pay premiums in lieu thereof, failure to provide rest periods or pay premiums in lieu thereof, failure to provide accurate wage statements, failure to pay final wages, failure to provide paid sick leave, failure to keep accurate time records, and violation of Labor Code sections 558 and 558.1

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4. Plaintiff has sought permission pursuant to California Labor Code section 2699 et seq. to pursue the claims set forth in this Complaint against Defendants as a Private Attorney General on behalf of himself and other similarly situated employees. Pursuant to California Labor Code section 2699.3, Plaintiff gave written notice via online submission to the Labor and Workforce Development Agency (“LWDA”) on approximately September 1, 2021. Plaintiff provided facts and legal bases for his claims within the notice to the LWDA on all violations asserted under the Private Attorneys General Act cause of action. Plaintiff also submitted the \$75.00 filing fee. The September 1, 2021 notice was also sent via certified mail to Defendants on the same day. To date, the LWDA has not provided any response to Plaintiff’s notice correspondence. Accordingly, Plaintiff has exhausted all administrative remedies pursuant to the Private Attorneys General Act (“PAGA”) and may bring this action on behalf of himself and all similarly situated employees, *i.e.* Aggrieved Employees. *See* Cal. Lab. Code § 2699.3(a)(2)(A), (c)(3); *Caliber Bodyworks, Inc., v. Sup. Ct.*, 134 Cal. App. 4th 365, 383 n.18, 385 n.19 (2005). Aggrieved Employees include but is not limited to the following: All non-exempt employees who are currently working or have worked for Defendants within the applicable statute of limitations up to the present date.

5. MATTHEW GERSUK is an individual over the age of eighteen (18) and is a resident of the State of California.

6. On information and belief, Plaintiff alleges RS&I, INC. is now and/or at all times mentioned in this Complaint was an Idaho Corporation and the owner and operator of an industry, business and/or facility doing business in the State of California.

7. Defendants DOES 1 through 100 are affiliates, subsidiaries and related entities and the alter egos of each of the other Defendants named herein, corporate or otherwise, who participated in and are liable for the actions herein alleged. Plaintiff will seek to amend this Complaint to allege the true names and capacities of these DOE Defendants when they are ascertained.

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

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

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

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 11 as though fully set forth herein.

13. Plaintiff worked for Defendant from August 5, 2019, to present, primarily doing inside sales as an Account Executive. Especially during COVID, Plaintiff and other executives worked exclusively from their offices or homes. Plaintiff did not have authority to hire and fire employees on behalf of RS&I, Inc.

14. Defendants failed to pay two times the minimum wages to Plaintiff in order to legally treat him as an exempt employee.

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1 15. Defendants failed to pay Plaintiff for all hours worked. Defendant failed to pay Plaintiff
2 all overtime and minimum wages he is owed as they misclassified him as exempt. Plaintiff typically
3 worked one and a half (1.5) to two (2) hours of unpaid overtime per day, usually working at least half an
4 hour prior to the commencement of office hours, i.e., 8:00 a.m., and then he typically worked at least
5 one (1) hour after office hours, i.e., 5:00 p.m. In addition, Plaintiff typically worked an hour or two on
6 Saturdays and Sundays.

7 16. Defendants failed to properly track the hours worked of Plaintiff and similarly situated
8 employees. This led to underpayment of wages, including minimum wages and overtime. Defendants
9 recently instituted an accurate method to track time for their employees.

10 17. Defendant failed to also properly provide meal and rest breaks to Plaintiff and similarly
11 situated employees. Plaintiff missed many meal periods and took many meal periods after the fifth hour
12 of work because of Defendant's policies, including them illegally classifying Plaintiff as exempt. Due
13 to his hours on the phone, Plaintiff many times was unable to break for a meal period and/or rest break.

14 18. Further, Defendants did not reimburse Plaintiff and other similarly situated employees for
15 using their personal computer, printer, printer products and internet for work purposes. Plaintiff used his
16 own tablet, wireless internet and printers for work purposes, and even had to purchase a laptop to
17 complete his job duties. Defendants failed to indemnify and reimburse Plaintiff.

18 19. Defendants also paid Plaintiff and other similarly situated employees commissions.
19 Plaintiff did not ever sign or see a commission plan but did earn commissions.

20 20. As a result of Defendants' failure to pay minimum wages, failure to pay overtime wages,
21 failure to pay reimbursement expenses, and failure to pay meal and rest period premium, Defendants
22 failed to provide all final wages owed to Plaintiff within twenty-four (24) hours of their termination or
23 seventy-two (72) hours of their resignation. In addition, Defendants failed to keep accurate time records
24 and failed to provide Plaintiff with accurate wage statements. The wage statements Defendants
25 provided to Plaintiff did not accurately state his total regular hours worked, gross wages and net wages,
26 all deductions made, and the full address of the legal entity that is the employer. The address in
27 Plaintiff's paystubs does not state the city where the employer legal entity is located. Consequently, the
28 wage statements were defective.

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

21. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 20 as though fully set forth herein.

22. 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 sections 1194, 1197.1, and Wage Order No. 7, § 4 (Failure to Pay Minimum Wages);
 - Violation of Labor Code section 226.7, 512 and Wage Order No. 7, §§ 11(A) and 11(B) (Failure to Provide Meal Periods or Pay Premiums in Lieu Thereof);
 - Violation of Labor Code sections 201-203, 256 (Failure to Pay Final Wages);
 - Violation of Labor Code sections 226, 226.3 (Failure to Provide Accurate Wage Statements);
 - Violation of Labor Code section 558 and 558.1 (Violation of Provision Regulating Hours and Days of Work in Any Industrial Welfare Commission Order);
 - Violation of Labor Code sections 226.3 and 1174 (Failure to Maintain Accurate Time Records);
 - Violation of Labor Code sections 510 and 1194 Wage Order No. 7, § 3 (Failure to Pay Overtime Wages);
 - Violation of Labor Code section 226.7, 512 and Wage Order No. 7, §§ 12(A) and 12(B) (Failure to Provide Rest Periods or Pay Premiums in Lieu Thereof);
 - Violation of Labor Code § 2802 (Failure to Pay Reimbursement for Expenses)
 - Violation of Labor Code §§ 246, 246.5, 248.5 (Failure to Provide Paid Sick Leave)
23. Plaintiff has received authorization, based on the LWDA's failure to send notice of

1 its intent to pursue Plaintiff's claims and based on Defendants' failure to cure Plaintiff's claims, to act
2 on behalf of the Labor Commissioner to assess civil penalties against Defendants.

3 24. Plaintiff seeks civil penalties against Defendants pursuant to Labor Code section
4 2699(f)(2) to the extent there is no enumerated penalty provision for the specific sections cited above.

5 25. Plaintiff seeks these civil penalties on behalf of herself and all other former and
6 current employees from Defendants pursuant to Labor Code sections 2699(a) and 2699.3.

7
8 **DAMAGES**

9 WHEREFORE Plaintiff request(s) relief as follows:

10 1. A jury trial;

11 2. As to the First Cause of Action:

12 a. For civil penalties as provided for in the Labor Code for each enumerated
13 violation;

14 b. For those Labor Code sections, the violation of which there is no civil penalty
15 provided, the default penalty provided in Labor Code section 2699(f): for any
16 initial violation, one hundred dollars (\$100) for each aggrieved employee per pay
17 period; For any subsequent violation, two hundred dollars (\$200) for each
18 aggrieved employee per pay period;

19 c. Reasonable attorney's fees and costs pursuant to Labor Code section 2699;

20 d. For any other remedies as allowed by law and/or deemed appropriate by the
21 Court;

22 3. For such other and further relief as this Court may deem just and proper,
23 including, but not limited to:

24 a. Wages as proved at trial;

25 c. Attorney's fees and costs as provided for by law; and

26 d. Interest.

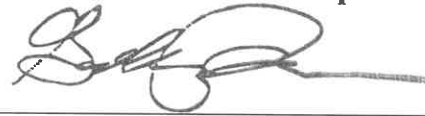
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Dated: January 26, 2022

Shimoda Law Corp.

By: _____



Galen T. Shimoda
Attorneys for Plaintiff