

1 Galen T. Shimoda (Cal. State Bar No. 226752)
2 Justin P. Rodriguez (Cal. State Bar No. 278275)
3 **Shimoda & Rodriguez Law, PC**
4 9401 East Stockton Boulevard, Suite 120
Elk Grove, CA 95624
Telephone: (916) 525-0716
Facsimile: (916) 760-3733

Attorneys for Plaintiff ELIZABET SANCHEZ,
individually and on behalf of all other similarly situated employees

FILED
SUPERIOR COURT-STOCKTON

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BY DANIELLE JEANDEBIEN
DEPUTY

8 **SUPERIOR COURT OF CALIFORNIA**
9 **FOR THE COUNTY OF SAN JOAQUIN**

10 ELIZABET SANCHEZ, individually and on
11 behalf of all other similarly situated
12 employees,

13 Plaintiff,

14 vs.

15 PACIFIC COAST PRODUCERS, a California
16 Corporation; and DOES 1 to 100, inclusive,

17 Defendants.

Case No. STK-CV-UOE-2021-11106

CLASS ACTION

**FIRST AMENDED COMPLAINT FOR
DAMAGES:**

1. Failure to Pay Overtime Wages
2. Meal Period Violations
3. Rest Period Violations
4. Wage Statement Violations
5. Waiting Time Penalties
6. Failure to Reimburse Expenses
7. Unfair Competition
8. Private Attorneys General Act

DEMAND FOR JURY TRIAL

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2
3 Plaintiff ELIZABET SANCHEZ ("Plaintiff"), on behalf of herself and all other similarly
4 situated employees, hereby files this First Amended Complaint against Defendants PACIFIC
5 COAST PRODUCERS, a California Corporation; and DOES 1 to 100, inclusive (hereinafter all
6 collectively referred to as "Defendants"). On information and belief, Plaintiff alleges the following:

7 **INTRODUCTION**

8 1. This is a class action and Private Attorneys General Act ("PAGA") lawsuit brought by
9 Plaintiff for failure to provide overtime wages, meal and rest period violations, wage statement
10 violations, failure to provide reimbursements, waiting time penalties, and unfair competition.

11 **JURISDICTION AND VENUE**

12 2. The San Joaquin County Superior Court has jurisdiction in this matter pursuant to
13 California Code of Civil Procedure section 410.10 to determine alleged violations of the California
14 Labor Code, California Business and Professions Code, and Wage Order No. 3.

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

20 4. Plaintiff has sought permission pursuant to California Labor Code section 2699 *et seq.* to
21 pursue the claims set forth in this First Amended Complaint against Defendants as a Private Attorney
22 General on behalf of herself and other similarly situated employees. Pursuant to California Labor Code
23 section 2699.3, Plaintiff gave written notice via online submission to the Labor and Workforce
24 Development Agency ("LWDA") on approximately November 24, 2021. Plaintiff provided facts and
25 legal bases for her claims within the notice to the LWDA on all violations asserted under the PAGA
26 cause of action. Plaintiff also submitted the \$75.00 filing fee. The November 24, 2021, notice was also
27 sent via certified mail to Defendants on the same day. To date, the LWDA has not provided any
28 response to Plaintiff's notice correspondence. Accordingly, Plaintiff has exhausted all administrative

1 remedies pursuant to the PAGA and may bring this action on behalf of herself and all similarly situated
2 employees, *i.e.* aggrieved employees. *See* Cal. Lab. Code § 2699.3(a)(2)(A), (c)(3); *Caliber Bodyworks,*
3 *Inc., v. Sup. Ct.*, 134 Cal. App. 4th 365, 383 n.18, 385 n.19 (2005). Aggrieved employees include, but
4 are not limited to the following: all non-exempt employees working for Defendant in California from
5 November 24, 2020 to present.

6 **PARTIES**

7 5. ELIZABET SANCHEZ is an individual over the age of eighteen (18) and is a resident
8 of the State of California.

9 6. On information and belief, Plaintiff alleges PACIFIC COAST PRODUCERS, is now
10 and/or at all times mentioned in this Complaint was a California Corporation and the owner and
11 operator of an industry, business and/or facility doing business in the 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.

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

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

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

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

27 //

28 //

CLASS ALLEGATIONS

12. Plaintiff brings the First through Seventh Causes of Action on behalf of herself and all others similarly situated as a class action pursuant to California Code of Civil Procedure section 382. The class which Plaintiff seeks to represent is composed of, and defined, as follows:

All non-exempt employees who have or continue to work for Defendants in California from December 7, 2017 to the present.

13. This action has been brought and may be properly maintained as a class action, pursuant to the provision of California Code of Civil Procedure section 382, because there is a well-defined community of interests in the litigation and the proposed class is easily ascertainable.

(a) Numerosity: The putative class is so numerous that the individual joinder of all members is impracticable under the circumstances of this case. While the exact number of class members is unknown to Plaintiff at this time, Plaintiff is informed and believes that Defendants have employed as many as five hundred (500) individuals falling within the above stated class definition throughout the State of California during the applicable statute of limitations, who were subjected to the policies and practices outlined in this Complaint. As such, joinder of all members of the putative class is not practicable.

(b) Common Questions Predominate: Common questions of law and fact exist as to all members of the putative class and predominate over questions that affect only individual members of the class. These common questions of law and fact include, without limitation, the following:

- (1) Whether Defendants had a policy and practice to incorporate the value of non-discretionary remuneration into putative class members' regular rates of pay for the purpose of paying overtime wages and paid sick time;
- (2) Whether Defendants authorized and permitted all meal periods;
- (3) Whether Defendants authorized and permitted all rest periods;
- (4) Whether Defendants failed to reimburse Plaintiff and putative class members for work-related cell phone use;

1 (5) Whether as a result of Defendants' policies and practices Plaintiff's and putative
2 class members received all wages, due and owing, at the time of their termination
3 or separation; and

4 (6) Whether as a result of Defendants' policies and practices Plaintiff's and putative
5 class members received all wages, due and owing, at the time of their termination
6 or separation; and

7 (7) Whether Defendants provided Plaintiff's and putative class members with wage
8 statements that complied with Labor Code section 226.

9 (c) Typicality: Plaintiff's claims are typical of the claims of the members of the putative
10 class. The putative class also sustained damages arising out of Defendants' common
11 course of conduct in violation of the law as complained of herein. Plaintiff and all
12 members of the putative class were non-exempt employees who received
13 nondiscretionary remuneration and were not paid all overtime wages and paid sick time
14 due to incorrect calculations of their regular rates of pay and were not authorized and
15 permitted to take all meal and paid rest periods. Additionally, Defendants issued Plaintiff
16 and all members of the putative class wage statements that did not comply with Labor
17 Code section 226. As a result, Plaintiff and each member of the putative class will have
18 suffered the same type of harm and seek the same type of recovery based on the same
19 legal theories.

20 (d) Adequacy: Plaintiff will fairly and adequately protect the interests of the members of the
21 putative class. For all relevant times, Plaintiff resided in California and worked for
22 Defendants in California. Moreover, Plaintiff is an adequate representative of the
23 putative class as Plaintiff has no interests that are adverse to those of putative class
24 members. Additionally, Plaintiff has retained counsel who has substantial experience in
25 complex civil litigation and wage and hour matters.

26 (e) Superiority: A class action is superior to other available means for the fair and efficient
27 adjudication of the controversy since individual joinder of all members of the putative
28 class is impracticable. Class action treatment will permit a larger number of similarly

1 situated persons to prosecute their common claims in a single forum simultaneously,
2 efficiently, and without the unnecessary duplication of effort and expense that numerous
3 individual actions would engender. Further, as damages suffered by each individual
4 member of the class may be relatively small, the expenses and burden of the individual
5 litigation would make it difficult or impossible for individual members of the class to
6 redress the wrongs done to them, and an important public interest will be served by
7 addressing the matter as a class action. The cost to the court system of adjudication of
8 such individualized litigation would be substantial. Individualized litigation would also
9 present the potential for inconsistent or contradictory judgments.

10 14. Plaintiff is unaware of any difficulties that are likely to be encountered in the
11 management of this action that would preclude its maintenance as a class action.

12 GENERAL ALLEGATIONS

13 15. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 14 as though fully
14 set forth herein.

15 16. Defendants operate a business that packages, cans, labels, and distributes shelf-stable
16 fruits and tomatoes. Defendants' base of operations is in Lodi, California, but they operate facilities in
17 Oroville and Woodland, California, as well. Plaintiff worked for Defendants from approximately
18 November 2020 to August 2021 as a non-exempt, hourly employee.

19 17. Plaintiff and similarly situated employees regularly worked over eight (8) hours in a day
20 or more and/or over forty (40) hours in a week. Plaintiff and similarly situated employees were also
21 paid non-discretionary remuneration, such as a yearly production bonus. Defendant failed to incorporate
22 the value of this non-discretionary remuneration into Plaintiff's and similarly situated employees'
23 regular rates of pay for the purpose of paying overtime wages, meal and rest period premiums, and sick
24 leave wages.

25 18. Defendants further did not authorize and permit Plaintiff and similarly situated
26 employees to take all meal and rest periods owed to them. Plaintiff and similarly situated employees did
27 not receive all uninterrupted thirty (30) minute meal periods every five (5) hours and ten (10) minute
28

1 rest periods every four (4) hours or major fraction thereof. Defendants did not pay Plaintiff and
2 similarly situated employees missed meal or rest period premiums.

3 19. Finally, Defendants failed to pay Plaintiff and similarly situated employees for work-
4 related cell phone use even though cell phones were used as a means of communication between
5 employees and management throughout the workday.

6 20. As a result of Defendants' failure to pay Plaintiff and similarly situated employees all
7 overtime wages, paid sick wages, and meal and rest period premiums owed, the wage statements
8 Defendants issued were inaccurate. The paystubs Defendants issued did not itemize accurate regular
9 and overtime rates of pay, accurate missed meal and rest period premiums owed, and accurate gross and
10 net wages earned. As a result, Plaintiff and similarly situated employees were not able to determine the
11 total wages owed to them from their paystubs alone.

12 21. As of this date of this letter, Defendants have not paid Plaintiff and similarly situated
13 employees all overtime wages, paid sick time, and meal and rest period premiums owed to them.

14 CAUSES OF ACTION

15 FIRST CAUSE OF ACTION 16 FAILURE TO PAY OVERTIME WAGES (As to all Defendants)

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

19 23. During the period Plaintiff was employed by Defendants, Defendants were required to
20 compensate Plaintiff at one and one-half (1½) times the regular rate of pay for hours worked in excess of
21 eight (8) hours per day and/or forty (40) hours per week, and two (2) times the regular rate of pay for
22 hours worked in excess of twelve (12) hours per day. *See, e.g., IWC Wage Order No. 3, section (3)(A);*
23 *Cal. Lab. Code §§ 510, 1194.*

24 24. Plaintiff and similarly situated employees worked in excess of eight (8) hours per day
25 and/or forty (40) hours per week on several occasions while employed by Defendants. However,
26 Defendants failed to compensate Plaintiff and similarly situated employees for all overtime hours
27 worked at their regular rate of pay.
28

25. Plaintiff and similarly situated employees were not exempt from overtime protections employees under the California Wage Orders and Labor Code.

26. 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.

SECOND CAUSE OF ACTION
MEAL PERIOD VIOLATIONS
(As to all Defendants)

27. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 26 as though fully set forth herein.

28. An employer must provide an employee a meal period in accordance with the applicable Wage Order, and California Labor Code sections 226.7 and 512.

29. California Labor Code sections 226.7 and 512 and IWC Wage Order No. 3, section 11(A) require an employer to provide an uninterrupted meal period of not less than thirty (30) minutes for each work period of more than five (5) hours.

30. California Labor Code section 512 and Wage Order No. 3 section 11(B) further provide that employers may not employ employees for a work period for more than ten (10) hours per day without providing the employee with a second meal period of at least thirty (30) minutes. However, if the total hours worked is no more than twelve (12) hours, the second meal period may be waived so long as there was no waiver as to the first meal period. Employees are entitled to one (1) hour of pay at their regular rate of compensation for each meal period not provided.

31. Defendants employed Plaintiff and similarly situated employees for periods of more than five (5) hours without providing meal breaks of at least thirty (30) minutes or a second meal period of at least thirty (30) minutes when Plaintiff and similarly situated employees worked more than ten (10) hours in a day. Defendants also failed to allow Plaintiff and similarly situated employees to take their first meal period before the completion of their fifth hour of work and failed to allow Plaintiff and similarly situated employees to take their second meal period before the completion of their tenth hour of work. Plaintiff and similarly situated employees did not waive their rights to all meal periods throughout their employment.

32. Defendants further failed to pay Plaintiff and similarly situated employees the applicable meal period premiums for any such missed meal breaks.

33. 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.

THIRD CAUSE OF ACTION
REST PERIOD VIOLATIONS
(As to all Defendants)

34. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 33 as though fully set forth herein.

35. An employer must provide an employee a rest period in accordance with the applicable Wage Order and California Labor Code section 226.7.

36. California Labor Code section 226.7 and Wage Order No. 3, section 12(A) require an employer to provide a rest period of not less than ten (10) minutes for each work period of more than four (4) hours or a major fraction thereof.

37. Plaintiff alleges that Defendants failed to authorize and permit Plaintiff and similarly situated employees to take paid rest periods of at least ten (10) minutes for each work period that they worked more than four (4) hours or a major fraction thereof.

38. Defendants further failed to pay Plaintiff and similarly situated employees the applicable rest period premiums for any such missed rest periods.

39. 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.

FOURTH CAUSE OF ACTION
WAGE STATEMENT VIOLATIONS
(As to all Defendants)

40. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 39 as though fully set forth herein.

41. Pursuant to California Labor Code section 226(a), an employer must provide an itemized statement to an employee, semimonthly or at the time of each payment of wages, showing:

1 (1) gross wages earned, (2) total hours worked by the employee, except for
2 any employee whose compensation is solely based on a salary and who is
3 exempt from payment of overtime under subdivision (a) of Section 515 or
4 any applicable order of the Industrial Welfare Commission, (3) the
5 number of piece-rate units earned and any applicable piece rate if the
6 employee is paid on a piece-rate basis, (4) all deductions, provided that
7 all deductions made on written orders of the employee may be aggregated
8 and shown as one item, (5) net wages earned, (6) the inclusive dates of the
9 period for which the employee is paid, (7) the name of the employee and
10 the last four digits of his or her social security number or an employee
11 identification number other than a social security number, (8) the name
and address of the legal entity that is the employer and, if the employer is
a farm labor contractor, as defined in subdivision (b) of Section 1682, the
name and address of the legal entity that secured the services of the
employer, and (9) all applicable hourly rates in effect during the pay
period and the corresponding number of hours worked at each hourly rate
by the employee. The deductions made from payment of wages shall be
recorded in ink or other indelible form, properly dated, showing the
month, day, and year, and a copy of the statement and the record of the
deductions shall be kept on file by the employer for at least three years at
the place of employment or at a central location within the State of
California.

12 42. Plaintiff alleges that Defendants intentionally and knowingly failed to provide an
13 itemized statement or failed to provide an accurate and complete itemized statement showing the
14 requirements set forth in California Labor Code section 226(a). Specifically, Defendants did not
15 accurately itemize all applicable hourly rates in effect during the pay period, all regular, overtime
16 and double time hours worked and corresponding rates of pay, and gross and net wages earned.
17 Plaintiff and similarly situated employees were not able to promptly and easily determine their total
18 hours worked from their paystubs alone. Additionally, Plaintiff and similarly situated employees
19 suffered confusion over whether they received all wages owed and were prevented from effectively
20 challenging information on their wage statements.

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

24 **FIFTH CAUSE OF ACTION**
25 **WAITING TIME PENALTIES**
(As to all Defendants)

26 44. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 43 as though fully
27 set forth herein.
28

1 53. Defendants required Plaintiff and similarly situated employees to use their personal cell
2 phones for work purposes but failed to reimburse them for such use.

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

6 **SEVENTH CAUSE OF ACTION**
7 **UNFAIR COMPETITION**
8 **(As to All Defendants)**

9 55. Plaintiff s by reference and re-alleges paragraphs 1 through 54 as though fully set forth
10 herein.

11 56. Unfair competition shall mean and include any unlawful, unfair or fraudulent business act
12 or practice and unfair, deceptive, untrue or misleading advertising and any act prohibited by Chapter 1
13 (commencing with Section 17500) of Part 3 of Division 7 of the Business and Professions Code. See
14 California Business and Professions ("B&P") Code § 17200.

15 57. Plaintiff and similarly situated employees were not paid all wages owed, including
16 minimum and overtime wages, and meal and rest period premiums, paid sick leave, or reimbursed for
17 business expenses, during their employment or any time thereafter.

18 58. Plaintiff further alleges that such actions and/or conduct constitute a violation of the
19 California Unfair Competition Law ("UCL") (Business and Professions Code 17200 *et seq.*) pursuant to
20 *Cortez v. Purolator Air Filtration Products Co.*, 23 Cal. 4th 163 (2000).

21 59. As a direct and legal result of the Defendants' conduct, as alleged herein, pursuant to the
22 UCL (including B&P Code §17203), Plaintiff and similarly situated employees are entitled to
23 restitution, including, but not limited to, interest and penalties pursuant to Business & Professions Code
24 sections 17203, 17208, violations of California Labor Code sections 226.7, 510, 512, and 1194 all in an
25 amount as yet unascertained but subject to proof at trial, for four (4) years from the filing of this Action.

26 **EIGHTH CAUSE OF ACTION**
27 **PRIVATE ATTORNEYS GENERAL ACT**
28 **(As to all Defendants)**

29 60. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 59 as though fully
30 set forth herein.

- 1 b. Interest for the wages due pursuant to California Labor Code section 1194;
- 2 c. For reasonable attorney's fees and costs incurred pursuant to California Labor
- 3 Code section 1194;
- 4 3. As to the Second Cause of Action:
- 5 a. Wages in an amount to be proven at trial;
- 6 b. Attorney's fees, costs and interest pursuant to California Code of Civil Procedure
- 7 section 1021.5;
- 8 4. As to the Third Cause of Action:
- 9 a. Wages in an amount to be proven at trial;
- 10 b. Attorney's fees, costs and interest pursuant to California Code of Civil Procedure
- 11 section 1021.5;
- 12 5. As to the Fourth Cause of Action:
- 13 a. Penalties as provided for in Labor Code section 226, including the greater of all
- 14 actual damages or fifty dollars (\$50.00) for the initial pay period in which the
- 15 violation occurred and one hundred dollars (\$100.00) per employee for each
- 16 violation in the subsequent pay periods, but not to exceed four thousand dollars
- 17 (\$4,000.00);
- 18 b. For reasonable attorney's fees and costs incurred pursuant to Labor Code section
- 19 226(e);
- 20 6. As to the Sixth Cause of Action:
- 21 a. An amount to be proven at trial;
- 22 b. For attorney's fees, interest, and costs pursuant to Labor Code section 2802(c);
- 23 7. As to the Eighth Cause of Action:
- 24 a. For civil penalties as provided in the Labor Code for each enumerated
- 25 violation;
- 26 b. For those Labor Code sections where there is no civil penalty provided for their
- 27 violation, the default penalty provided in Labor Code section 2699(f): for any
- 28 initial violation, one hundred dollars (\$100) for each aggrieved employee per pay

1 period; For any subsequent violation, two hundred dollars (\$200) for each
2 aggrieved employee per pay period;

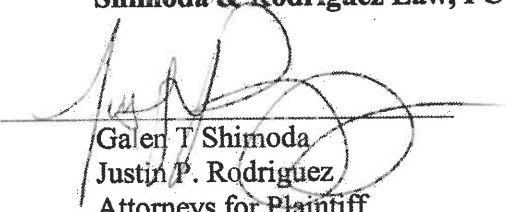
- 3 c. Reasonable attorney's fees and costs pursuant to Labor Code section 2699;
4 d. For any other remedies as allowed by law and/or deemed appropriate by the
5 Court;

6 8. For such other and further relief as this Court may deem just and proper,
7 including, but not limited to:

- 8 a. Wages as proved at trial;
9 b. Injunctive and Declaratory relief;
10 c. Attorney's fees and costs as provided for by law; and
11 d. Interest.

12
13 Dated: February 10, 2022

Shimoda & Rodriguez Law, PC

14
15 By: 

Galen T. Shimoda
Justin P. Rodriguez
Attorneys for Plaintiff