

03/22/2022

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By _____, Deputy

Case Number:

34-2022-00317208

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

5 Attorneys for Plaintiff LUIS GONZALEZ
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8 **SUPERIOR COURT OF CALIFORNIA**
9 **FOR THE COUNTY OF SACRAMENTO**
10

11 **LUIS GONZALEZ,**

12 **Plaintiff,**

13 **vs.**

14 **GENERAL PRODUCE CO., A**
15 **CALIFORNIA LIMITED PARTNERSHIP, a**
16 **California Limited Partnership; and**
DOES 1 to 100, inclusive,

17 **Defendants.**
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Case No.

COMPLAINT FOR CIVIL PENALTIES:

1. Private Attorneys General Act

1 Plaintiff LUIS GONZALEZ ("Plaintiff"), on behalf of himself and all other Aggrieved
2 Employees, hereby file this Complaint against Defendants GENERAL PRODUCE CO., A
3 CALIFORNIA LIMITED PARTNERSHIP, a California Limited Partnership; and DOES 1 to 100,
4 inclusive (hereinafter all collectively referred to as "Defendants"). On information and belief,
5 Plaintiff alleges the following:

6 INTRODUCTION

7 1. This is a representative Private Attorneys General Act ("PAGA") lawsuit brought by
8 Plaintiff for failure to provide overtime wages, meal and rest period violations, wage statement
9 violations, unpaid sick time, and waiting time penalties.

10 JURISDICTION AND VENUE

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

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

19 4. Plaintiff sought permission pursuant to Labor Code section 2699 *et seq.* to pursue the
20 claims set forth in this Complaint against Defendants as a Private Attorney General on behalf of himself
21 and other Aggrieved Employees. Pursuant to Labor Code section 2699.3, Plaintiff gave written notice
22 via online submission to the Labor and Workforce Development Agency ("LWDA"). Plaintiff provided
23 facts and legal bases for his claims within the notice to the LWDA on all violations asserted under the
24 Private Attorneys General Act cause of action. The \$75.00 filing fee was also paid. The notice was also
25 sent via certified mail to Defendants on the same day. Plaintiff is informed and believes, that the
26 LWDA did not provide any response to Plaintiff's notice correspondence and that it has been more than
27 65 days since his notice correspondence was sent to the LWDA. Accordingly, Plaintiff is informed and
28 believes that he has exhausted all administrative remedies pursuant to the Private Attorneys General Act

1 and may bring this action on behalf of himself and all Aggrieved Employees. *See* Cal. Labor Code §
2 2699.3(a)(2)(A), (c)(3); *Caliber Bodyworks, Inc. v. Sup. Ct.*, 134 Cal.App.4th 365, 383 n.18, 385 n.19
3 (2005). Aggrieved Employees includes all non-exempt employees who have, or continue to, perform
4 work for Defendants in California from November 9, 2020 to the present.

5 **PARTIES**

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

8 6. On information and belief, Plaintiff alleges, GENERAL PRODUCE CO., A
9 CALIFORNIA LIMITED PARTNERSHIP, is now and/or at all times mentioned in this Complaint
10 was a California Limited Partnership and the owner and operator of an industry, business and/or
11 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. 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.
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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. Defendants operate a business that packages and transports produce. Plaintiff worked for Defendants from approximately May 11, 2020 to August 9, 2021 as an hourly, non-exempt employee.

14. Plaintiff and Aggrieved Employees regularly worked ten (10) to twelve (12) hours in a day or more and/or over forty (40) hours in a week. Plaintiff and Aggrieved Employees were also paid non-discretionary remuneration, such as incentives and bonuses for arriving on time to work, packing a certain number of boxes of produce per day, and getting trucks out quickly with produce without any delays. Defendants failed to incorporate the value of this non-discretionary remuneration into Plaintiff's and Aggrieved Employees' regular rates of pay for the purpose of paying overtime wages and paid sick time.

15. Defendants did not authorize and permit Plaintiff and Aggrieved Employees to take all meal and rest periods owed to them. Plaintiff and Aggrieved Employees did not receive all uninterrupted thirty (30) minute meal periods every five (5) hours and ten (10) minute rest periods every four (4) hours or major fraction thereof. Defendants required Plaintiff and Aggrieved Employees to clock out before their fifth hour of work for meal periods regardless of whether they were able to take a meal period at that time or not. Sometimes Plaintiff and Aggrieved Employees were able to take a meal period later in the day and other times meal periods were missed entirely or did not last a full thirty (30) minutes. Additionally, Plaintiff and Aggrieved Employees worked over ten (10) or twelve (12) hours in a day without being authorized and permitted to take a second meal period or third rest period. Defendants did not pay Plaintiff and Aggrieved Employees missed meal or rest period premiums.

16. As a result of Defendants' failure to pay Plaintiff and Aggrieved Employees all overtime wages, paid sick time, and meal and rest period premiums owed, the wage statements Defendant issued were inaccurate. The paystubs Defendants issued did not itemize accurate regular and overtime rates of pay, accurate missed meal and rest period premiums owed, and accurate gross and net wages earned. As

1 a result, Plaintiff and Aggrieved Employees were not able to determine the total wages owed to them
2 from their paystubs alone.

3 17. As of the date of this Complaint being filed, Defendants have not paid Plaintiff and
4 Aggrieved Employees all overtime wages, paid sick time, and meal and rest period premiums owed to
5 them.

6 **CAUSES OF ACTION**
7 **FIRST CAUSE OF ACTION**
8 **PRIVATE ATTORNEYS GENERAL ACT**
9 **(As to all Defendants)**

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

12 19. Plaintiff has alleged to the Labor Commissioner that Defendants have violated the
13 following provisions of the Labor Code in their dealings with him and other Aggrieved Employees:

- 14 • Violation of Labor Code §§ 510, 1194; IWC Wage Order 13, § 3 (Failure to Pay
15 Overtime Wages)
- 16 • Violation of Labor Code §§ 226, 226.3 (Failure to Provide Accurate Wage
17 Statements)
- 18 • Violation of Labor Code §§ 201-203, 256 (Failure to Pay Final Wages)
- 19 • Violation of Labor Code §§ 558, 558.1 (Provisions Regulating Hours and Days of
20 Work in Any Industrial Welfare Commission Order)
- 21 • Violation of Labor Code §§ 226.7, 512; IWC Wage Order 13, §§ 11(A) and 11(B)
22 (Failure to Provide Meal Periods or Pay Premiums in Lieu Thereof)
- 23 • Violation of Labor Code § 226.7; IWC Wage Order 13, § 12(A) (Failure to Provide
24 Rest Periods or Pay Premiums in Lieu Thereof)
- 25 • Violation of Labor Code § 246, 246.5, 248.5 (Failure to Provide Paid Sick Leave)

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

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

1 **DAMAGES**

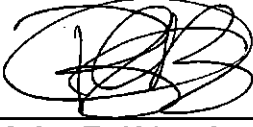
2 WHEREFORE Plaintiff requests relief as follows:

3 1. **As to the First Cause of Action:**

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

14
15 Dated:

Shimoda & Rodriguez Law, PC

16
17 By: 

18 Galen T. Shimoda
19 Justin P. Rodriguez
20 Brittany V. Berzin
21 Attorneys for Plaintiff
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