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Joel Zelaya and Demetrio Montes

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES – POMONA COURTHOUSE

JOEL ZELAYA, an Individual; DEMETRIO
MONTES, an Individual;

Plaintiffs,

vs.

COMMERCIAL LUMBER & PALLET CO.,
INC., a California Corporation; RAYMOND
GUTIERREZ, an Individual; and DOES 1
through 100, inclusive,

Defendants.

CASE NO.: 22PSCV00340

COMPLAINT FOR:

- 1. Failure to Provide Rest Breaks
(California Labor Code Section 226.7);
and**
- 2. Civil Penalties Pursuant to California
Private Attorneys General Act (Labor
Code §2698, et seq.)**

**UNLIMITED CIVIL
DEMAND FOR JURY TRIAL**

Plaintiffs Joel Zelaya and Demetrio Montes (hereinafter collectively referred to as “Plaintiffs”) allege, and state as follows:

PARTIES

1. Plaintiff JOEL ZELAYA, at all times relevant herein, was, and is, an individual residing in the City of La Puente, County of Los Angeles, State of California.

2. Plaintiff DEMETRIO MONTES, at all times relevant herein, was, and is, an individual residing in the City of Monrovia, County of Los Angeles, State of California.

3. Defendant COMMERCIAL LUMBER & PALLET CO., INC. (“CLPC”) a California Corporation doing business in City of Industry, California and across the state of California. Plaintiff is informed and believes, and thereon alleges, that Defendant regularly employed five or more persons at all relevant times to this action.

4. Defendant, RAYMOND GUTIERREZ (“GUTIERREZ”), is an individual doing business in City of Industry, California. Plaintiff is informed and believes, and thereon alleges, that RODRIGUEZ is an owner and manager of COMMERCIAL LUMBER & PALLET CO., INC., who is also liable under Labor Code Section 558.1. Defendant COMMERCIAL LUMBER & PALLET CO., INC., and RAYMOND GUTIERREZ are collectively referred as “DEFENDANTS.”

5. Plaintiff is ignorant of the true names and capacities, whether individual, corporate, associate or otherwise, of the Defendants sued herein under fictitious names Does 1 through 100, inclusive, and for that reason sues said Defendants, and each of them, by such fictitious names. Plaintiff is informed, believes, and thereupon alleges that each of the Defendants Does 1 through 100, inclusive, is and was in some manner responsible for, participated in, or contributed to the matters and things of which Plaintiff complains herein, and in some fashion, has legal responsibility, therefore. When Plaintiff ascertains the names and capacities of the fictitiously named Defendants Does 1 through 100, inclusive, Plaintiff will seek leave to amend this Complaint to set forth such facts.

6. Plaintiff is informed, believes, and there upon alleges that each Defendants is, and at all times relevant herein was, the agent of his, her, or its co-Defendants, and in committing the

1 acts alleged herein, was acting within the scope of his, her, or its authority as such agent, and with
2 the knowledge, permission, and consent of his, her, or its co-Defendants.

3 **JURISDICTION AND VENUE**

4 7. This Court has jurisdiction over this action and the matters alleged herein pursuant
5 to the grant of original jurisdiction set forth in Article VI, Section 10 of the California Constitution.
6 The statutes under which this action is brought do not specify any other basis for jurisdiction.

7 8. This Court has jurisdiction over Defendant because, upon information and belief,
8 each Defendant is either a citizen of California, has sufficient minimum contracts in California, or
9 otherwise intentionally avails itself of the California market so as to render the exercise of
10 jurisdiction over it by this Court consistent with traditional notions of fair play and substantial
11 justice.

12 9. Venue is proper in this Court, because, upon information and belief, one or more of
13 the named Defendants resides, transacts business, or has offices in this county and the acts or
14 omissions alleged herein took place in this county.

15 10. Plaintiff is informed and believes and thereon alleges, that damages in this action do
16 not meet or exceed \$5,000,000.

17 11. On January 17, 2022, Plaintiff provided notice to the California Labor and
18 Workforce Development Agency (“CLWDA”) of their intent to file a lawsuit against Defendant
19 pursuant to the Private Attorneys General Act for violations of Labor Code section 226.7 and the
20 relevant industrial wage orders. This matter has been assigned case number LWDA-CM-863103-
21 22 by the CLWDA. As of the date of filing of this Complaint, the CLWDA has not provided any
22 notice that it intends to investigate the alleged violations. Accordingly, upon stipulation of the
23 parties and with leave from the Court, Plaintiffs now file this Complaint pursuant to California
24 Labor Code section 2699.3(c), which authorizes a plaintiff to amend an existing civil complaint
25 within 60 days of the relevant event giving rise to a complaining employee’s right to proceed in a
26 civil action brought under the California Private Attorneys General Act (California Labor Code
27 section 2698, et seq.)

28 12. Plaintiffs hereby demand a trial by jury.

1 **FACTS COMMON TO ALL CAUSES OF ACTION**

2 13. Defendants Commercial Lumber & Pallet Co., Inc., is a California based pallet
3 manufacturer that offers pallets, recycled pallets, crates, industrial lumber, and pallet recycling. Its
4 primary place of business is located in the City of Industry, California. Throughout the relevant
5 time-period, Defendants employed Plaintiffs and other aggrieved workers in the State of California.

6 14. Plaintiff, Joel Zelaya was hired by Defendants on or about May 16, 2012, as a
7 warehouse worker, a non-exempt hourly position. Plaintiff Demetrio Montes was hired in or about
8 March 1990 and his currently position is an operator, a non-exempt hourly position. Plaintiffs allege
9 that Defendants did not allow Plaintiffs and other aggrieved employees to take their mandated rest
10 breaks as required by the California Labor Code by requiring Plaintiffs and aggrieved employees
11 to take one twenty-minute break.

12 15. Plaintiffs allege that these uniform and consistent policies and practices have
13 resulted in the systematic violation of the labor code sections alleged below.

14 **FIRST CAUSE OF ACTION**

15 **(Violation of California Labor Code Section 226.7**

16 **Failure to Provide Rest Breaks – Against all Defendants)**

17 16. Plaintiff refers to and incorporates herein by reference the above paragraphs as
18 though fully set forth herein.

19 17. At all times relevant herein, the applicable IWC Wage Order and California Labor
20 Code section 226.7 was applicable to Plaintiffs.

21 18. At all times set forth herein, California Labor Code section 226.7 provided and
22 provides that employers may not require their employees to work during a legally mandated rest
23 period.

24 19. At all times set forth herein, the applicable IWC Wage Order required and requires
25 every employer subject to the Wage Orders to authorize and permit rest periods at the rate of ten
26 (10) minutes net rest time per four (4) hours or major fraction thereof.

27 20. California Labor Code section 226.7 further provides that if an employer fails to
28 provide an employee with a legally mandated rest period, the employer shall pay the employee one

1 (1) additional hour of pay at the employee's regular rate of compensation for each workday that the
2 rest period is not provided.

3 21. At all times relevant herein, Plaintiffs have regularly worked shifts of a length of
4 four (4) hours or a major fraction thereof or longer.

5 22. Defendants failed to authorize and permit Plaintiffs to take rest periods as required
6 by law and failed to compensate employees for paid rest breaks.

7 23. During the relevant time period, Defendants failed to pay Plaintiffs the full rest
8 period premium due pursuant to California Labor Code section 226.7.

9 24. Defendants' conduct violates California Labor Code section 226.7.

10 25. Pursuant to California Labor Code section 226.7, Plaintiffs are entitled to recover
11 from Defendants one (1) additional hour of pay at the employees' regular hourly rate of
12 compensation for each workday that a rest period was not provided.

13 26. As a proximate cause of the aforementioned violations, Plaintiffs have been
14 damaged in an amount to be determined at trial, but in an amount in excess of the jurisdiction of
15 this Court. Plaintiffs are entitled to recover the unpaid balance of wages owed, penalties, including
16 penalties available pursuant to California Labor Code sections 226.7 and 558, plus interest.

17 **SECOND CAUSE OF ACTION**

18 **Labor Code §2698, et seq. – PAGA**

19 **(Against all Defendants)**

20 27. Plaintiff refers to and incorporates herein by reference the above paragraphs as
21 though fully forth herein.

22 28. California Labor Code section 2698, et seq., the Private Attorneys General Act
23 ("PAGA"), allows an aggrieved employee to bring suit against an employer for violations of most
24 California Labor Code provisions, including, but not limited to, violations of California Labor Code
25 sections 226(a), 226.7, *et seq.* By virtue of Defendants' numerous violations of the California Labor
26 Code as against Plaintiffs as described herein, Plaintiffs are aggrieved employees as defined in
27 California Labor Code section 2698, et seq.
28

29. Defendants' acts constitute an ongoing unlawful activity prohibited by the California Labor Code, and, therefore, these acts constitute violations of the PAGA.

30. Plaintiffs have provided notice of these violations pursuant to California Labor Code section 2699.3 and has specifically asked the CLWDA if it intends to investigate the alleged violations. Plaintiffs did not receive a response back from the CLWDA within the time limits outlined in California Labor Code section 2699.3 with notification that it intends to investigate the alleged violations, and thus, Plaintiffs are entitled to prosecute their PAGA claims under California Labor Code section 2699, et seq.

31. The proper measure of damages and penalties under the PAGA is all aggrieved employees, whether a party to this action or not. Further, this claim needs no certification to proceed with class-wide recovery. See Arias v. Superior Court, 46 Cal. 4th 969, 970-975 (2009).

32. Further, as a direct and proximate result of the conduct of Defendant, as set forth above, Plaintiffs were forced to incur substantial attorney's fees and costs which are recoverable under California Labor Code Section 2699(g)(1).

33. Accordingly, Plaintiffs and all aggrieved employees respectfully request that the Court award judgment and relief in their favor as described herein.

PRAYER FOR DAMAGES

WHEREFORE, Plaintiffs pray for judgment against Defendants and DOES 1 through 100, inclusive, as follows:

ON THE FIRST CAUSE OF ACTION

(Failure to Provide Rest Breaks)

1. That the Court declare, adjudge, and decree that Defendants violated California Labor Code section 226.7 and applicable IWC Wage Orders by willfully failing to authorize and permit all rest periods (including second rest periods) to Plaintiffs;
2. That the Court make an award to Plaintiffs of one (1) hour of pay at each employee's regular rate of compensation for each workday that a rest period was not provided;
3. For all actual, consequential, and incidental losses and damages, according to proof, but in an amount exceeding \$250,000;

4. For premiums pursuant to California Labor Code section 226.7(c);
5. For pre-judgment interest on any unpaid wages from the date such amounts were due; and
6. For reasonable attorneys' fees and for costs of suit incurred herein.

ON THE SECOND CAUSE OF ACTION

(PAGA)

1. That the Court impose penalties against Defendants on behalf of Plaintiffs and all aggrieved employees according to the Private Attorneys General Act ("PAGA"); and
2. For reasonable attorneys' fees and for costs of suit incurred herein.

AS TO ALL CAUSES OF ACTION:

1. For an award of reasonable attorneys' fees, costs, expert costs, and expenses pursuant to statutory and common law; and
2. For such other and further relief as this Court may deem just, fair, and proper.

DATED: April 6, 2022

Respectfully Submitted,
BARKHORDARIAN LAW FIRM, PLC

/s/ Heather K. Cox

Heather K. Cox
Attorney for Plaintiffs, Joel Zelaya
and Demetrio Montes