

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: Thomas Long

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Attorneys for Plaintiff Christian Garcia, individually and on behalf of other aggrieved current and former employees.

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES – CENTRAL DISTRICT**

CHRISTIAN GARCIA, individually and on
behalf of other aggrieved current and former
employees,

Plaintiff(s),

v.

DANIEL GERSTNER, SILVIA GERSTNER,
ALAMO CAR WASH, INC., MISSION CAR
WASH SAN GABRIEL, INC., SAN
GABRIEL MISSION CAR WASH, INC., and
DOES 1 through 50,

Defendants.

Case No.: **23STCV05770**

**COMPLAINT FOR PAGA PENALTIES
AND OTHER PAGA RELIEF**

1. Misclassification Violations
2. Overtime Violations
3. Minimum Wage Violations
4. Meal Period Violations
5. Rest Break Violations
6. Tip Violations
7. Sick Time/Leave Violations
8. Payment/Timely Payment of Wage Violations
9. Indemnification Violations
10. Wage Statement Violations
11. Final Wage Payment Violations
12. Seating Violations
13. Employment Record Violations

Bench Trial

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2. Plaintiff herein is Christian “Christy” Garcia. Plaintiff was employed/jointly employed by Defendants from about October 26, 2021 through February 2, 2022, and Plaintiff is bringing this PAGA action seeking penalties for employment law violations on her own behalf and on behalf other aggrieved employees who are described as follows: All other current and former employees of Defendants who were either 1) classified as non-exempt employees or 2) should have been classified as non-exempt employees who worked for Defendants at any time during the following time period: One year before the date that the PAGA Notice Letter was filed with the LWDA on October 28, 2022 and continuing until the unlawful employment practices are stopped or a judgment is obtained.

3. At all times herein, Plaintiff was a resident of, and employed in, the County of Los Angeles, State of California.

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- a. Plaintiff was not provided rest breaks,
- b. Plaintiff was not paid at least the minimum wage for all the hours she worked,
- c. Plaintiff was not paid regular wages and/or overtime wages for all the hours that she worked,
- d. Plaintiff was not advised as to the number of sick time hours that she had accumulated under California law in either the wages statements furnished to her or in a separate writing furnished to her along with her wage statement,
- e. Plaintiff was not paid for sick time that she used when she was ill,

- 1 f. Plaintiff was not paid all of the wages that she was due at the time she was
2 terminated from employment,
3 g. Plaintiff was not provided with legally compliant wage statements,
4 h. Plaintiff was not provided with any wage statement for the hours she worked
5 after January 28, 2022, including the time she showed up for work on February
6 2, 2022, but was terminated, and
7 i. Plaintiff was not provided with complete copies of her employment records.

8 **PAGA Claim Filed with the LWDA / Tolling of the Statute**

9 5. Plaintiff has exhausted all statutory prerequisites to filing a Private Attorneys General
10 Action in this matter by providing written notice to the Labor and Workforce Development
11 Agency that Defendants had violated and were continuing to violate California employment
12 laws.

13 6. More than sixty-five days have passed since Plaintiff provided written notice (by online
14 submission to the Labor and Workforce Development Agency and by certified mail to
15 Defendants) that Defendants had violated and continued to violate provisions of the California
16 Labor Code. Plaintiff has not received notice from the LWDA that it intends to prosecute an
17 action against Defendants. Therefore, as statutorily permitted by Labor Code § 2699.3, Plaintiff
18 has the right to commence a Private Attorneys General Action (PAGA) pursuant to Labor Code
19 § 2699.

20 7. Pursuant to the PAGA (Lab. Code § 2699.3(d)), filing of Plaintiff's PAGA Notice
21 Letter with the LWDA on October 28, 2022 and service of said notice on Defendants resulted
22 in a tolling of the applicable statute of limitation(s) for 65 days after said filing.

23 **General Allegations re Defendants**

24 8. Plaintiff brings this action against the following Defendants and said Defendants'
25 successors in interest, alter egos, and other persons/entities engaged with Defendants in a joint
26 enterprise of providing gas station services (including associated food mart and lube services)
27 and car wash services:

- 28 a. Defendant Alamo Car Wash, Inc. was a California corporation registered with the

Secretary of State with whose principal place of business is 784 Nogales St., Walnut, Calif., 91789.

- b. Defendant Mission Car Wash San Gabriel, Inc., is an active California corporation registered with the Secretary of State with whose principal place of business is 918 S. San Gabriel Blvd., San Gabriel, Calif. 91776.
- c. Defendant San Gabriel Mission Car Wash, Inc. was a California corporation registered with the Secretary of State with whose principal place of business is 918 S. San Gabriel Blvd., San Gabriel, Calif. 91776.
- d. The following businesses are believed to be dbas of Defendants Daniel Gerstner and/or Silvia Gerstner and/or are dbas of one or more of the above-referenced corporate entities: Alamo Food Mart (located at 762 N. Nogales Ave., Walnut, Calif., 91789), Alamo Express Lube (located at 762 N. Nogales Ave., Walnut, Calif., 91789), Alamo Car Wash (located at 784 Nogales St., Walnut, Calif., 91789), Mission Car Wash (located at 918 S. San Gabriel Blvd., San Gabriel, Calif. 91776). Alternatively, said businesses are entities of a presently unknown business or corporate form.
- e. Each of the above-referenced businesses and persons and DOES 1 - 50 are collectively referred to herein as Defendants and were the employers/joint employers of Plaintiff and the other aggrieved employees referenced herein.
- f. At all relevant times, Defendants Daniel (Dan) Gertsner, Silvia Gertsner and DOES 21 - 30 have been owners, officers, directors and/or managing agents of each of the above-referenced businesses. Said individual Defendants either directly participated in and/or encouraged the illegal conduct described herein and/or ratified the illegal conduct of others, including employees/co-employees under their supervision.
- g. Defendants DOES 31 through 50 are unidentified persons or entities who are legally responsible in some actionable manner for the illegal acts and omissions complained of herein. To the extent said Defendants are a business entity, the

1 form of said Defendants is unknown at the present time.

2 9. Defendants had authority to set the policies, procedures, and practices adopted and/or
3 utilized in the businesses referenced in this complaint. Defendants also had the authority to
4 hire, transfer, promote, assign, reward, discipline the employees/co-employees working at said
5 businesses or to effectively recommend said actions. Defendants also had responsibility to act
6 on employee grievances and/or to effectively recommend action on employee grievances.
7 Defendants also had the responsibility to direct the daily work activities of the employees/co-
8 employees working at said businesses. The exercise of said authority and responsibility by said
9 individual Defendants required the use of their independent judgment.

10 10. At all times herein and for many prior years, Defendants either employed individuals in
11 California and/or were involved in managing businesses and/or employees in California.
12 During those years, Defendants were provided with notifications from various governmental
13 agencies as well as from various publications advising employers of the employment laws
14 referenced herein. Accordingly, Defendants knew the obligations that were owed to employees
15 under California law. As such, Defendants' failures to comply with California employment
16 laws as described herein were done willfully, intentionally and with knowledge of their
17 illegality. Despite said knowledge, Defendants deliberately approved, established and/or
18 implemented business-wide policies, procedures and/or practices they knew violated California
19 law as set forth herein and did so for the purpose of maximizing the profits of their respective
20 businesses as well as their own personal gain (monetary or otherwise) to the illegal detriment of
21 employees, including Plaintiff.

22 11. Additionally, based on requirements set forth in the Labor Code and wage orders
23 applicable to Defendants' business, at all times herein, Defendants knew it was necessary to
24 possess, and Defendants did possess, a certain level of knowledge and skill in order to comply
25 with the labor and employment laws applicable to their area of business. Said knowledge was
26 vastly superior to that of Defendants' employees. Moreover, as set forth herein, Defendants'
27 employees depended on Defendants to know, record, and/or track certain information to ensure
28 California employment laws were followed. Such things include the dates and times worked

1 by employees, when wages were owed to employees, the minimum wages, regular wages and
2 overtime wages owed to employees, the number of rest breaks and meal breaks that employees
3 were entitled to take, when rest breaks and meal breaks were to be provided, the information
4 required to be accurately reported on wage statements, when wage statements were to be
5 provided to employees, when employees should be paid their final wages, how employees were
6 to be advised of the amount of sick time accrued, when employees were entitled to receive sick
7 time/sick time pay, etc.

8 12. Each Defendant that was a business entity or organization at the relevant times herein,
9 was a privately-owned business authorized to do business in the State of California.

10 **Alter-Ego / Joint Enterprise Allegations**

11 13. All business entity Defendants herein are and at all times herein mentioned were the
12 alter-egos of each and every individually named Defendant and there exists, and at all times
13 herein mentioned has existed, a unity of interest and ownership between said Defendants such
14 that any separateness between them has ceased to exist in that the defendants have completely
15 controlled, dominated, managed, and operated the business entity defendants and have
16 intermingled the assets of each to suit their convenience. Further, the business entity
17 defendants are, and at all times mentioned herein were, mere shells, instrumentalities and
18 conduits through which Defendants carried out their business by its name while exercising
19 complete control and dominance of the business such that individuality or separateness of the
20 business entities did not exist. Additional facts supporting the existence of an alter ego and/or
21 joint enterprise relationship between Defendants include the following: Defendants
22 commingled funds and other assets, Defendants held themselves out as a single entity,
23 Defendants share equitable ownership, they use the same offices, Defendants have disregarded
24 corporate formalities, Defendants share the same directors and officers, etc.

25 14. All Defendants herein were also members of a joint enterprise of providing gas station
26 services (including associated food mart and lube services) and car wash services. Each said
27 Defendant contributed skill, effort, knowledge, and/or money to achieve a common purpose,
28 namely, maximizing their respective and collective business profits as well as their individual

profits.

General Allegations re Fictitious DOE Defendants

15. The facts linking the fictitiously designated Defendants with the causes of action alleged herein and/or the true names and capacities, whether individual, corporate, partnership, or otherwise of Defendants, DOES 1 through 50, are unknown to Plaintiff(s) at this time, who therefore sue said Defendants by such fictitious names and will seek to amend this complaint to show their true names and/or capacities when ascertained. Said Defendants are sued as employers, principals and/or agents, servants, and/or employees of said employers or principals who were performing acts within the course and scope of their authority and/or employment. Each Defendant designated herein as a "DOE" is responsible in some actionable manner for the events and happenings referred to herein which proximately caused the injuries, damages, losses and/or penalties as alleged herein.

Defendants' Failure to Comply with Plaintiff's Labor Code § 226 Requests

16. Plaintiff does not have copies of all of her employment records with Defendants and Defendants have failed to provide Plaintiff with complete copies of her employment records (including work schedules, time sheets, rest break/meal break records, sick time records, and wage statements) even though such records pertain to Plaintiff's employment with Defendants and were requested from Defendants by Plaintiff pursuant to Labor Code § 226. Said records were also not produced by Defendants after a complaint was filed with the LWDA (and concurrently served on Defendants) in which it was alleged that said records had not been provided in accordance with Labor Code § 226. Plaintiff also does not have access to the employment records of the other aggrieved employees involved in this PAGA action. After Defendants have produced said employment records in this action, additional facts in support of each count pled in this complaint can be determined.

No Exemptions or Legal Excuse

17. There is no legally recognized exemption or exception which excused Defendants from complying with the California employment laws at issue in this action; therefore, Defendants were without legal justification or excuse for failing to comply with said laws.

18. While acting on their own behalf or on behalf of the above-referenced business entities, Defendants Daniel Gertsner, Silvia Gertsner and DOES 21 – 30 (who were owners, directors, officers, and/or managing agents of said business entities) caused the California employment laws at issue in this action to be violated by establishing and/or implementing employment, wage, and/or payroll procedures, and/or policies that violated said laws. Therefore, to the extent permitted under Labor Code § 558.1, said individual Defendants are as liable as the business entities for such violation(s).

Count One – Misclassification Violations

Misclassification of Non-Exempt Employees

Remedies

- 8 -

22. Plaintiff hereby incorporates paragraphs 1 through 20 of this Complaint.

23. At all times during the statute of limitations period applicable to this cause of action Defendants and each of them willfully, knowingly, and intentionally failed to pay the overtime wages owed to Plaintiff and the other aggrieved employees encompassed in Plaintiffs PAGA Notice Letter.

24. As applicable under California law to the allegations made in this count, Plaintiff (on behalf of the LWDA, herself and/or the other aggrieved employees) is entitled to recover the remedies set forth below in the Prayer for PAGA Penalties and Other PAGA Relief.

25. Plaintiff hereby incorporates paragraphs 1 through 20 of this Complaint.

26. At all times herein, Defendants were required to pay Plaintiff (and the other aggrieved employees encompassed by Plaintiff's PAGA Notice Letter) at least the minimum hourly wage required under California law for all time worked by said employees.

27. At all times during the applicable statutes of limitations period, Defendants willfully, knowingly, and intentionally failed to pay, calculate, and/or compensate Plaintiff and the other aggrieved employees encompassed by Plaintiff's PAGA Notice Letter the minimum wages they were entitled to.

28. As applicable under California law to the allegations made in this count, Plaintiff (on behalf of the LWDA, herself and/or the other aggrieved employees) is entitled to recover the remedies set forth below in the Prayer for PAGA Penalties and Other PAGA Relief.

29. Plaintiff hereby incorporates paragraphs 1 through 20 of this Complaint.

1 **Defendants' Failure to Provide Required Meal Periods**

2 30. At all times during the statute of limitations period, Defendants failed to provide its
3 non-exempt employees (including Plaintiff and the other aggrieved employees encompassed by
4 Plaintiff's PAGA Notice Letter) with the meal periods they were entitled to and/or also failed
5 to pay them the required premium pay that they were entitled to.

6 **Remedies**

7 31. As applicable under California law to the allegations made in this count, Plaintiff (on
8 behalf of the LWDA, herself and/or the other aggrieved employees) is entitled to recover the
9 remedies set forth below in the Prayer for PAGA Penalties and Other PAGA Relief.

10 **Count Five – Rest Break Violations**

11 32. Plaintiff hereby incorporates paragraphs 1 through 20 of this Complaint.

12 **Defendants' Failure to Provide Required Rest Periods**

13 33. At all times during the statute of limitations period, Defendants failed to provide its
14 non-exempt employees (including Plaintiff and other aggrieved employees encompassed by
15 Plaintiff's PAGA Notice Letter) with the rest breaks they were entitled to and/or also failed to
16 pay them the required premium pay that they were entitled to.

17 **Remedies**

18 34. As applicable under California law to the allegations made in this count, Plaintiff (on
19 behalf of the LWDA, herself and/or the other aggrieved employees) is entitled to recover the
20 remedies set forth below in the Prayer for PAGA Penalties and Other PAGA Relief.

21 **Count Six -- Failure To Pay Tips**

22 35. Plaintiff hereby incorporates paragraphs 1 through 20 of this First Amended Complaint.

23 **Failure to Distribute Tips**

24 36. At all times during the statute of limitations period, Defendants failed to distribute tips
25 and/or all of the tips which had been collected from customers and were required to be
26 distributed to Plaintiff (and other aggrieved employees encompassed by Plaintiff's PAGA
27 Notice Letter).

Remedies

37. As applicable under California law to the allegations made in this count, Plaintiff (on behalf of the LWDA, herself and/or the other aggrieved employees) is entitled to recover the remedies set forth below in the Prayer for PAGA Penalties and Other PAGA Relief.

Count Seven – Sick Time/Leave Violations

38. Plaintiff hereby incorporates paragraphs 1 through 20 of this Complaint.

Defendants' Failure to Comply with Sick Time/Leave Laws

39. At all times during the statute of limitation period, Defendants: 1) failed to provide Plaintiff (and other aggrieved employees encompassed by Plaintiff's PAGA Notice Letter) with the amount of sick time they were entitled to, 2) failed to provide Plaintiff (and other aggrieved employees encompassed by Plaintiff's PAGA Notice Letter) with an accounting of the number of sick hours that said employees had accrued which they were entitled to, 3) failed to allow Plaintiff (and other aggrieved employees encompassed by Plaintiff's PAGA Notice Letter) to take sick time for reasons employees were allowed to take sick leave, and/or 4) failed to pay Plaintiff (and other aggrieved employees encompassed by Plaintiff's PAGA Notice Letter) for sick time when said employees were entitled to be paid sick time.

Remedies

40. As applicable under California law to the allegations made in this count, Plaintiff (on behalf of the LWDA, herself and/or the other aggrieved employees) is entitled to recover the remedies set forth below in the Prayer for PAGA Penalties and Other PAGA Relief.

Count Eight – Payment/Timely Payment Of Wage Violations

41. Plaintiff hereby incorporates paragraphs 1 through 20 of this Complaint.

Defendants' Failure to Pay All Earned Wages

42. At all times during the statute of limitations period applicable to this cause of action, Defendants willfully, knowingly, and intentionally failed to pay Plaintiff (and the other aggrieved employees encompassed by Plaintiff's PAGA Notice Letter) for all the time they actually worked and earned wages (including regular wages, overtime wages, minimum wages and/or tips). Since such wages were not paid, said wages were also not paid within the

1 timeframes that employees were entitled to be paid said wages.

2 **Remedies**

3 43. As applicable under California law to the allegations made in this count, Plaintiff (on
4 behalf of the LWDA, herself and/or the other aggrieved employees) is entitled to recover the
5 remedies set forth below in the Prayer for PAGA Penalties and Other PAGA Relief.

6 **Count Nine – Indemnification Violations**

7 44. Plaintiff hereby incorporates paragraphs 1 through 20 of this Complaint.

8 **Defendants’ Failure to Indemnify for Business Expenditures**

9 45. At all times during the statute of limitations period applicable to this count, Defendants
10 failed to indemnify Plaintiff (and the other aggrieved employees encompassed by Plaintiff’s
11 PAGA Notice Letter) for the business expenditures they incurred on behalf of Defendants for
12 which they were entitled to be indemnified and/or reimbursed.

13 **Remedies**

14 46. As applicable under California law to the allegations made in this count, Plaintiff (on
15 behalf of the LWDA, herself and/or the other aggrieved employees) is entitled to recover the
16 remedies set forth below in the Prayer for PAGA Penalties and Other PAGA Relief.

17 **Count Ten – Wage Statement Violations**

18 47. Plaintiff hereby incorporates paragraphs 1 through 43 of this Complaint.

19 **Defendants’ Failure to Provide Wage Statements**

20 48. At all times during the statute of limitations period applicable to this count, Defendants
21 failed to provide Plaintiff (and the other aggrieved employees encompassed by Plaintiff’s PAGA
22 Notice Letter) with the wage statements they were entitled to. To the extent wage statements
23 were provided, the statements did not accurately record the hours worked and/or the amount of
24 wages (minimum wages, regular wages, premium wages, overtime wages, and/or tips) that said
25 employees had earned.

26 **Remedies**

27 49. As applicable under California law to the allegations made in this count, Plaintiff (on
28 behalf of the LWDA, herself and/or the other aggrieved employees) is entitled to recover the

remedies set forth below in the Prayer for PAGA Penalties and Other PAGA Relief.

Count Eleven – Final Wage Payment Violations

50. Plaintiff hereby incorporates paragraphs 1 through 20 of this Complaint.

Defendants' Failure to Timely Pay

Wages Owed at the Time of Separation

51. At all times during the applicable statute of limitations period, Defendants failed to provide Plaintiff (and the other aggrieved employees encompassed by Plaintiff's PAGA Notice Letter) who had separated from employment with Defendants with the wages that were owed to the employee at the time of their separation and/or failed to do so within the required time period.

Remedies

52. As applicable under California law to the allegations made in this count, Plaintiff (on behalf of the LWDA, herself and/or the other aggrieved employees) is entitled to recover the remedies set forth below in the Prayer for PAGA Penalties and Other PAGA Relief."

Count Twelve - Seating Violations

53. Plaintiff hereby incorporates paragraphs 1 through 18 of this Complaint.

Defendants' Failure to Provide Mandated Seating

54. At all times during the applicable statute of limitations period, Defendants failed to provide Plaintiff (and the other aggrieved employees encompassed by Plaintiff's PAGA Notice Letter) with reasonable seating even though Defendants were required to do so and reasonably could have done so.

Remedies

55. As applicable under California law to the allegations made in this count, Plaintiff (on behalf of the LWDA, herself and/or the other aggrieved employees) is entitled to recover the remedies set forth below in the Prayer for PAGA Penalties and Other PAGA Relief."

Count Thirteen – Employment Record Violations

56. Plaintiff hereby incorporates paragraphs 1 through 18 of this Complaint.

Failure to Provide Employment Records

57. During the statute of limitations period applicable to this count, upon the request of

1 Plaintiff (and the other aggrieved employees encompassed by Plaintiff's PAGA Notice Letter)
2 for copies of their employment records which they were entitled to, Defendants either failed to
3 provide such records or failed to provide complete copies of the records said employees were
4 entitled to.

5 Remedies

6 58. As applicable under California law to the allegations made in this count, Plaintiff (on
7 behalf of the LWDA, herself and/or the other aggrieved employees) is entitled to recover the
8 remedies set forth below in the Prayer for PAGA Penalties and Other PAGA Relief."

9 **PRAYER FOR PAGA PENALTIES AND OTHER PAGA RELIEF**

10 WHEREFORE, Plaintiff prays for judgment against Defendants, and each of them, in
11 an amount within the jurisdiction of the above-entitled court and within the applicable statutes
12 of limitation as follows:

- 13 1. All civil penalties and/or other penalties and remedies recoverable under the PAGA for
14 violations of the Labor Code, applicable Industrial Wage Order(s) and/or applicable
15 regulation, local law/ordinance, in the amount of \$2,500,000. To the extent required by
16 the PAGA, the civil penalties recovered on behalf of all aggrieved employees shall be
17 distributed seventy-five percent (75%) to the LWDA and the remaining twenty-five
18 percent (25%) distributed to Plaintiff and all aggrieved employees.
- 19 2. Attorneys' fees and/or costs to the full extent permitted under the PAGA.
- 20 3. Prejudgment interest to the fullest extent permitted under California law.
- 21 4. Post-judgment interest if applicable, to the fullest extent permitted by California law.
- 22 5. For such further relief as the court deems just and as permitted under California law.

23
24 DATED: March 15, 2023

MOORADIAN LAW, APC

25 By: **Zorik Mooradian**

26 Zorik Mooradian

27 Andrina G. Hanson

Nanor C. Kamberian

28 Attorney for Plaintiff Christian Garcia