

MESSRELIAN LAW INC.

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF RIVERSIDE

JOSE JESUS SANCHEZ,

Plaintiff,

vs.

JSJ FOODS, INC.; JEFFREY BARNES;
SHIRLEY BARNES; and DOES 1 to 25,
inclusive,

Defendants.

CASE NO.: **CVRI 2403294**

COMPLAINT FOR DAMAGES FOR:

**1) PRIVATE ATTORNEYS GENERAL
ACT ("PAGA");**

COMES NOW Plaintiff, JOSE JESUS SANCHEZ (hereinafter "Plaintiff"), and alleges as follows:

PARTIES, JURISDICTION, VENUE

1. Jurisdiction and Venue are proper in this Court and this action is properly filed in the County of RIVERSIDE in this judicial district because Defendants JSJ FOODS, INC.; JEFFREY BARNES; SHIRLEY BARNES; and DOES 1 to 25, inclusive, (hereinafter collectively known as "Defendant(s)" or "JSJ"), do business in the County of RIVERSIDE and because Defendants' obligations and liabilities arise therein. Moreover, Plaintiff's damages sought herein exceed \$35,000.

2. Plaintiff is a male resident of the State of California.

3. Plaintiff is informed and believes that at all times herein mentioned, Defendant JSJ FOODS, INC. is and was a California corporation, doing business in RIVERSIDE County, California, and which employed Plaintiff.

4. Plaintiff is informed and believes that at all times herein mentioned, Defendants JEFFREY BARNES and SHIRLEY BARNES are residents of the State of California, and the owners, managing agents, and/or directors of JSJ FOODS, INC. JEFFREY BARNES and SHIRLEY BARNES are being included in this lawsuit pursuant to Labor Code Section 558.1 in that they were and are involved in the day-to-day operations of the business, including the wage and hour policies and procedures, and as such, as controlled the hours, wages, and/or working conditions of Plaintiff and other hourly, non-exempt employees. Defendants JSJ FOODS, INC.; JEFFREY BARNES; SHIRLEY BARNES; and DOES 1 to 25 are collectively referred to herein as "Defendant(s)" (unless otherwise noted) or "JSJ".

5. Plaintiff is ignorant of the true names and capacities, whether individual, corporate, or

1 associate of those defendants fictitiously sued as DOES 1 to 25, inclusive, and so Plaintiff sues
2 them by these fictitious names. Plaintiff is informed and believes that each of the DOE
3 defendants, numbers 1 to 25, reside in the State of California and are in some manner
4 responsible for the conduct alleged herein. Upon discovering the true names and capacities of
5 these fictitiously named defendants, Plaintiff will amend this complaint to show the true names
6 and capacities of these fictitiously named defendants.

7
8 6. Unless otherwise alleged in this complaint, Plaintiff is informed, and on the basis of
9 that information and belief, alleges that at all times herein mentioned, each of the remaining
10 codefendants, in doing the things hereinafter alleged, were acting within the course, scope, and
11 under the authority of their agency, employment, or representative capacity, with the consent
12 of his/her codefendants.

13 **GENERAL ALLEGATIONS**

14 7. Plaintiff started working for JSJ as a cook. Plaintiff's employment with JSJ
15 ended on or around July 2022. During his employment tenure, Plaintiff was classified as an
16 hourly, non-exempt employee.

17 8. In the case of Huff v. Securitas Sec. Servs. USA, Inc., 23 Cal. App. 5th 745
18 (2018), Plaintiff, Huff, was employed as a security guard for the Defendant Employer, Securitas
19 Security Services USA, Inc., an onsite security provider. After about a year of employment, Huff
20 resigned. Huff then filed suit against Securitas under PAGA. In his claim, Huff specifically
21 alleged violations to the Labor Code requiring immediate payment of wages upon termination
22 of employment and weekly payment of wages to temporary employees. The trial court
23 determined Huff was not a temporary employee, and therefore, lacked standing to bring the
24 claim. Thus, Securitas was granted a motion for summary judgement. Later, the trial court
25 granted Huff a new trial. Securitas then appealed the grant of a new trial. On appeal, the issue
26 was whether Huff could bring a PAGA claim and sue for Labor Code violations that did not
27 directly affect him. Securitas unsuccessfully argued that the PAGA statute only allows the PAGA
28 representative to sue for violations that the representative has personally suffered. The PAGA
statute states that an "aggrieved employee" is able to file suit on behalf of themselves and others.

1 The statute also states that an “aggrieved employee” is “any person who was employed by the
2 alleged violator and against whom one or more of the alleged violations was committed.”
3 Because at least one of the violations that Huff had alleged had affected him personally, the
4 Court of Appeal denied Securitas’ motion.

5 9. In sum, since PAGA allows Plaintiffs to bring suit on behalf of both themselves and
6 other employees, it allows for suits broader than the specific violations the named employee
7 experienced. Therefore, even if the employee did not personally experience the Labor Code
8 violations, the employer may still be liable to under PAGA. Consequently, it is Plaintiff’s
9 position that Plaintiff can equivocally bring the following labor code violations on behalf of all
10 other employees, including hourly, non-exempt employees and even salaried employees.

11 10. It is Plaintiff’s position that JSJ has committed numerous labor code violations
12 against Plaintiff and other hourly, non-exempt employees who worked at any of JSJ’s restaurant
13 locations in the state of California during the PAGA period.

14 11. JSJ did not provide Plaintiff and other similarly situated aggrieved employees with
15 the minimum wages to which they were entitled for all work performed and did not compensate
16 him and others for all hours worked pursuant to California Labor Code §§ 1194, 1197, 1197.1,
17 1198, along with Industrial Welfare Commission Wage Order No. 5. Specifically, Plaintiff and
18 others were provided non-compliant meal and rest breaks because they were forced to work
19 through these breaks and/or these breaks were frequently interrupted due to work obligations
20 (which happened often), including when these employees were clocked out. This would be a
21 minimum wage violation since Plaintiff and others were not compensated for that time.
22 Moreover, the company had a policy and practice of rounding down the number of hours worked,
23 which led to time shaving and Plaintiff and others not being paid for all hours worked in violation
24 of minimum wage laws. Plaintiff further alleges that JSJ engaged in time shaving practices due
25 to the manual adjustments it made to the aggrieved employees’ time records, which also resulted
26 in a violation of minimum wage laws.

27 12. JSJ further violated minimum wage provisions due to other off-the-clock work
28 performed by Plaintiff and the aggrieved employees. Specifically, Plaintiff and others were not
compensated for the time it took to (i) clock in/out using JSJ’s timekeeping system; (ii) don/doff
their uniforms and/or protective gear while off-the-clock; and (iii) launder/clean their uniforms
after work hours at home.

1 13. Due to the above “off the clock” violations above, JSJ violated Labor Code § 510
2 because it failed to pay Plaintiff and other similarly situated aggrieved employees overtime, even
3 though they worked more than 8 hours per day, 12 hours per day, and/or 40 hours per week
4 throughout their employment. Plaintiff’s and others’ actual work hours, which included the “off
5 the clock” work as described above, entitled them to overtime, however, it was not company
6 policy to keep accurate track of all hours worked and to pay employees the accurate amount
7 overtime, especially since the “off the clock” work was not factored into the equation.
8 Furthermore, any incentive payments and/or bonus payments, which were received by Plaintiff
9 and others, were not factored into Plaintiff’s and other employees’ wage statements. As a result,
10 these bonus payments and/incentive pay were not calculated into their regular rate of pay for
11 purposes of deciphering the correct overtime rate of pay. Additionally, the incentive and bonus
12 payments were also not factored into Plaintiff’s regular rate for purposes of receiving meal and
13 rest break premiums, as per Ferra v. Loews, 11 Cal.5th 858 (2021).

14 14. JSJ violated Labor Code § 226.7 along with Industrial Welfare Commission Wage
15 Order No. 5 because it failed to provide Plaintiff and other similarly situated aggrieved
16 employees 10-minute rest periods for every four hours of work, or majority portion thereof,
17 throughout their employment. JSJ did not completely relieve Plaintiff of all duty during said rest
18 periods. JSJ did not pay to Plaintiff one additional hour of pay at Plaintiff’s regular rate of
19 compensation for each workday that one or more statutory rest periods was not provided. In fact,
20 it was not part of JSJ’s culture for employees such as Plaintiff and others to take at least two 10-
21 minute rest break every day wherein they are relieved of all work duties. The latter was due to
22 understaffing of employees and employees such as Plaintiff being too busy to be able to take
23 timely, uninterrupted rest breaks. In short, it was not part of the company policy or practice to
24 abide by consistent, ten-minute rest periods every four hours worked wherein employees were
25 relieved of all work duties.

26 15. JSJ also violated Labor Code §§ 512 and 226.7 along with Industrial Welfare
27 Commission Wage Order No. 5 because it failed to provide Plaintiff and other similarly situated
28 aggrieved employees the requisite 30-minute, uninterrupted meal periods for every five (5) hours
of work throughout their employment, and Plaintiff did not validly waive said meal periods. JSJ
did not completely relieve Plaintiff of all duties during said meal periods. JSJ did not pay to
Plaintiff one additional hour of pay at Plaintiff’s regular rate of compensation for each workday
that one or more statutory meal periods was not provided. If JSJ had Plaintiff sign a meal period

1 waiver, it would not be valid and enforceable since Plaintiff and others generally worked more
2 than a 6-hour shift. If JSJ had Plaintiff sign an on-duty meal period agreement wherein Plaintiff
3 agreed to work through his meal period, it would also be invalid and unenforceable because the
4 nature of Plaintiff's job does not prevent him from taking a meal period. As was the case with
5 rest periods, timely, uninterrupted meal breaks were definitively not part of the JSJ's culture as
6 Plaintiff and others would take their meal periods late and after the 5th hour worked or the meal
7 periods would be interrupted by work obligations. The meal periods were not authorized and
8 were not enforced. To the extent that JSJ argues that employees receive meal break premium pay
9 for missed meal periods, that argument is inconsequential for PAGA penalty purposes since the
10 PAGA penalties are for the violations themselves, irrespective of whether an employee received
11 the premium payment for a missed, short, or interrupted meal period. In *Kirby v. Immoos Fire*
12 *Protection, Inc.*, the Court stated, "section 226.7 does not give employers a lawful choice
13 between providing *either* meal and rest breaks *or* an additional hour of pay." See *Kirby v.*
14 *Immoos Fire Protection, Inc.*, (2012) 53 Cal.4th 1244, 1256 (emphasis in original). Thus, the
15 extra hour of pay does not excuse the violation; the employer has still committed a violation even
16 if the remedy for the violation has been paid. See *Wert v. U.S. Bancorp.*, (S.D. Cal. Mar. 22, 2016,
17 2016 WL 1110302 at *4). As such, the work environment and culture at JSJ was not conducive
18 to receiving consistent, timely, statutory meal breaks under California law. Moreover, any meal
19 or rest break premiums paid were not compensated at the weighted average regular rate, inclusive
20 of bonuses and/or incentive payments.

18 16. During the relevant time period, Plaintiff and/or other aggrieved employees were also
19 not compensated for reporting time pay to the extent they were subject to work less than half of
20 their usual or scheduled shift in a workday, as well as split shift pay due to unpaid periods of
21 more than one hour during a workday.

22 17. Furthermore, during the relevant time period, and due to the labor code violations
23 cited above, JSJ failed to pay Plaintiff and other similarly situated aggrieved employees all wages
24 due to them within any time period specified by California Labor Code section 204, including
25 minimum wages and overtime, tip compensation (see, e.g., Labor Code § 351), meal/rest break
26 premium payments, other premium payments (i.e., split shift and reporting time premium
27 payments), and tip compensation. JSJ was also in violation of California Labor Code section
28 226(a) by not providing access to paystubs and failing to include pertinent information on the
wage statements, including but not limited to, all hours worked, tips earned, gross wages earned,

1 net wages earned, all deductions, premium payments for meal and rest breaks, the correct legal
2 name and address of the legal employer, the correct beginning and end of the pay period, all
3 applicable hourly rates, and all identifying employee information, among other items. As such,
4 JSJ did not provide Plaintiff and other similarly situated aggrieved employees with complete,
5 accurate itemized wage statements.

6 18. JSJ violated Labor Code §§ 201-204, 208 and 1198, as well as the provisions in
7 Industrial Welfare Commission Wage Order No, because JSJ willfully failed to pay Plaintiff and
8 other similarly situated aggrieved employees earned and due wages during their employment, as
9 well as upon the separation of their employment, either immediately upon involuntary
10 termination, or within 72 hours of resignation. When Plaintiff was terminated, JSJ failed and
11 refused to pay all wages earned and due immediately upon separation at the place of discharge.
12 Plaintiff's paycheck also did not include all earned and due wages owed. These earned but unpaid
13 wages include compensation for all hours worked including minimum wages and overtime
14 compensation, tip compensation, premiums for missed meal and rest breaks, and premium
15 payments for split shifts and reporting time pay due to unpredictable work schedules.

16 19. JSJ also failed to keep accurate and complete employment records, including payroll
17 records showing the actual hours worked per day (including the time for meal periods) and the
18 wages paid to Plaintiff and other aggrieved employees pursuant to California Labor Code §§
19 226(c), 1174(d), and 1198.5. During the relevant time period, Plaintiff and other aggrieved
20 employees incurred necessary, business-related expenses and costs that were not reimbursed by
21 JSJ. These costs include, but are not limited to, uniforms work. Accordingly, JSJ was in violation
22 of California Labor Code §§ 2800 and 2802. To the extent these employees were required to pay
23 for uniforms and/or safety equipment from their paychecks, JSJ violated California Labor Code
24 §§ 221 and 224.

25 **FIRST CAUSE OF ACTION**

26 **PRIVATE ATTORNEYS GENERAL ACT**

27 **Representative Claim for PAGA penalties under California Labor Code sections 201,**
28 **202, 203, 204 and/or 204b, 208, 210, 221, 224, 226 (including 226a and 226c) 226.3, 226.7,**
351, 353, 510, 512, 558, 1174 (including 1174d), 1174.5, 1194, 1194.2, 1197, 1197.1, 1198,
1198.5, 2800, 2802, and IWC Wage Order no. 5)

(Plaintiff Against all Named Defendants and all DOE Defendants)

1 20. Plaintiff re-alleges and incorporates by reference each and every allegation in
2 paragraphs 1 through 19, inclusive, of this Complaint as though fully set forth herein.

3 21. Pursuant to law, on Plaintiff provided the required written notice to the LWDA
4 and Defendants of the specific violations of the California Labor Code that Defendants and
5 DOE defendants have violated and continue to violate.

6 22. Pursuant to California Labor code section 2699.3, no response was received from the
7 LWDA within 65 days of the postmark date of the above-alleged letter.

8 23. Plaintiff therefore has exhausted all administrative remedies required of him under
9 California Labor Code sections 2698, 2699, and 2699.3, and, as a result, may prosecute this
10 cause of action and pursue penalties in a representative action for Defendants' violations of the
11 Labor Code.
12

13 24. Pursuant to California Labor Code section 2699, any provisions of the Labor Code
14 that provides for a civil penalty to be assessed and collected by the LWDA or any of its
15 departments, divisions, commissions, boards, agencies, or employees for violation of the code
16 may, as an alternative, be recovered through a civil action brought by an aggrieved employee
17 on behalf of other current or former employees pursuant to the procedures specified in
18 California Labor Code section 2699.3.
19

20 25. Plaintiff is an "aggrieved employee" because Plaintiff was employed by the alleged
21 violator and had one or more of the alleged violations committed against him, and therefore is
22 properly suited to represent the interests of other current and former hourly, non-exempt
23 employees who worked for JSJ at all locations in the state of California during the relevant
24 PAGA Period.
25

26 26. Based on the acts alleged above, Plaintiff, on behalf of others, seeks penalties under
27 California Labor Code sections 2698 and 2699 because of Defendants' violations of numerous
28

1 provisions of the California Labor Code as alleged in this Complaint.

2 27. Plaintiff therefore has exhausted all administrative remedies required of him under
3 California Labor Code sections 2698, 2699, and 2699.3, and, as a result, may prosecute this
4 cause of action and pursue penalties in a representative action for Defendants' violations of the
5 Labor Code.

6 28. California Labor Code section 2699 et seq. imposes penalties upon culpable
7 Defendants for violating the Labor Code.

8 29. California Labor Code section 558 establishes a civil penalty as follows: Any
9 employer or other person action on behalf of an employer who violates, or causes to be
10 violated, a section of this chapter or any provision regulating hours and days of work in any
11 order of the Industrial Welfare Commission (including the "Hours and Days of Work" section
12 of the Wage Order) shall be subject to a civil penalty of (1) for any initial violation, fifty
13 dollars (\$50) for each underpaid employee for each pay period for which the employee was
14 underpaid... (2) for each subsequent violation, one hundred dollars (\$100) for each underpaid
15 employee for each pay period for which the employee was underpaid...
16

17
18 30. Plaintiff seeks penalties for Defendants' misconduct as alleged herein as permitted by
19 law, but only those penalties that are required to be shared with the LWDA as Plaintiff is not
20 seeking individual/victim specific relief or underpaid wages for Plaintiff or other aggrieved
21 employees in this specific cause of action under the Private Attorneys General Act.

22 31. Specifically, Plaintiff seeks penalties under California Labor Code section 2699, for
23 the following:
24

25 Violations of California Labor Code sections 201, 202, 203, 204 and/or 204b, 208, 210,
26 221, 224, 226 (including 226a and 226c) 226.3, 226.7, 351, 353, 510, 512, 558, 1174
27 (including 1174d), 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 2800, 2802 via 2698
28

1 and 2699 and any other Labor Codes and Industrial Welfare Commission Wage Order
2 Provisions (no. 5) violated based on the facts alleged in this Complaint.

3 32. Pursuant to Labor Code section 2698 et seq., Plaintiff seeks to recover attorney's fees,
4 costs, and civil penalties on behalf of other current and former aggrieved employees as alleged
5 herein in an amount to be shown according to proof at trial and within the jurisdictional limits
6 of this Court.
7

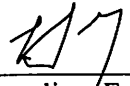
8 **PRAYER FOR RELIEF**

9 WHEREFORE, Plaintiff prays for Judgment against Defendants and each of them, as
10 follows:

- 11 1. For the imposition of civil penalties;
12 2. For maximum civil penalties available under Labor Code Section 2699 against
13 Defendants in a manner and amount authorized by that statute, as described more
14 particularly in the Complaint and representative PAGA claims;
15 3. For all costs and disbursements incurred in this suit;
16 4. Reasonable attorney's fees where available by law, including but not limited to, pursuant
17 to Labor Code section 2698 et seq., Code of Civil Procedure section 1021.5, and/or other
18 applicable laws; and
19 5. For such other and further relief as this Court may deem proper.
20

21 DATED: June 10, 2024

MESSRELIAN LAW INC.

22 By 
23 Harout Messrelian, Esq.
24 Attorneys for Plaintiff Jose Jesus Sanchez
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