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Superior Court of California,
Sacramento
08/01/2023
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By _____, Deputy
23CV005801

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8 **SUPERIOR COURT OF CALIFORNIA**
9 **FOR THE COUNTY OF SACRAMENTO**

10 JASON THAO, individually and on behalf of
11 all other similarly situated employees,

12 Plaintiff,

13 vs.

14 PITTSBURG WHOLESALE GROCERS,
15 INC., a California Corporation;
16 PERI NAVAB, an individual;
17 DAVID LUTTWAY, an individual;
REZA NEGHBAT, an individual; and
18 DOES 1 to 100, inclusive,

19 Defendants.
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Case No.

COMPLAINT FOR CIVIL PENALTIES:

1. Private Attorneys General Act

BY FAX

1 Plaintiff JASON THAO ("Plaintiff") hereby files this Complaint against Defendants
2 PITTSBURG WHOLESALE GROCERS, INC., a California Corporation; PERI NAVAB, an
3 individual; DAVID LUTTWAY, an individual; REZA NEGHBAT, an individual; and DOES 1 to
4 100, inclusive (hereinafter all collectively referred to as "Defendants"). On information and belief,
5 Plaintiff allege the following:

6 **INTRODUCTION**

7 1. This is a Private Attorneys General Act ("PAGA") lawsuit brought by Plaintiff for civil
8 penalties for violations of the California Labor Code, including failure to pay overtime wages, failure to
9 pay minimum wages, meal and rest period violations, failure to provide accurate wage statements,
10 failure to pay final wages, violation of Labor Code § 558, paid sick leave violations, and failure to pay
11 vested vacation time.

12 **JURISDICTION AND VENUE**

13 2. The Sacramento County Superior Court has jurisdiction in this matter pursuant to
14 California Code of Civil Procedure section 410.10 to determine alleged violations of the California
15 Labor Code, California Business and Professions Code, and Wage Order No. 9.

16 3. Venue is proper pursuant to Civil Procedure Code §§ 395(a) and 395.5, in that some of
17 the wrongful acts and violations of law asserted herein occurred within Sacramento County. *See*
18 *Crestwood Behavioral Health, Inc. v. Super. Ct.*, 60 Cal. App. 5th 1069, 1075 (2021) (holding venue in
19 a PAGA action is proper in any county where other aggrieved employees worked).

20 4. Plaintiff has sought permission pursuant to California Labor Code section 2699 *et seq.* to
21 pursue the claims set forth in this Complaint against Defendants as a Private Attorney General on behalf
22 of himself and other similarly situated employees. Pursuant to California Labor Code section 2699.3,
23 Plaintiff gave written notice via online submission to the Labor and Workforce Development Agency
24 ("LWDA") on approximately May 26, 2023. Plaintiff provided facts and legal bases for his claims
25 within the notice to the LWDA on all violations asserted under the Private Attorneys General Act cause
26 of action. Plaintiff also submitted the \$75.00 filing fee. The May 26, 2023, notice was also sent via
27 certified mail to Defendants on the same day. To date, the LWDA has not provided any response to
28 Plaintiff's notice correspondence. Accordingly, Plaintiff has exhausted all administrative remedies

1 pursuant to the Private Attorneys General Act ("PAGA") and may bring this action on behalf of himself
2 and all similarly situated employees, *i.e.*, Aggrieved Employees. *See* Cal. Lab. Code § 2699.3(a)(2)(A),
3 (c)(3); *Caliber Bodyworks, Inc., v. Sup. Ct.*, 134 Cal. App. 4th 365, 383 n.18, 385 n.19 (2005).
4 Aggrieved Employees includes, but is not limited to the following: all non-exempt employees who
5 worked for Defendants in California from May 26, 2020 to the present.

6 **PARTIES**

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

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

13 7. Plaintiff is informed and believes, and thereupon alleges, that PERI NAVAB is an
14 individual over the age of eighteen (18) and is a resident of the State of California. Plaintiff further
15 alleges that PERI NAVAB is an owner, director, officer, and/or managing agent of PITTSBURG
16 WHOLESALE GROCERS, INC. responsible for causing the violations outlined in this action. As
17 such PERI NAVAB is individually liable pursuant to California Labor Code section 558.1.

18 8. Plaintiff is informed and believes, and thereupon alleges, that DAVID LUTTWAY is
19 an individual over the age of eighteen (18) and is a resident of the State of California. Plaintiff
20 further alleges that DAVID LUTTWAY is an owner, director, officer, and/or managing agent of
21 PITTSBURG WHOLESALE GROCERS, INC. responsible for causing the violations outlined in this
22 action. As such DAVID LUTTWAY is individually liable pursuant to California Labor Code
23 section 558.1.

24 9. Plaintiff is informed and believes, and thereupon alleges, that REZA NEGHABAT is
25 an individual over the age of eighteen (18) and is a resident of the State of California. Plaintiff
26 further alleges that REZA NEGHABAT is an owner, director, officer, and/or managing agent of
27 PITTSBURG WHOLESALE GROCERS, INC. responsible for causing the violations outlined in this
28

1 action. As such REZA NEGHBAT is individually liable pursuant to California Labor Code section
2 558.1.

3 10. Defendants DOES 1 through 100 are affiliates, subsidiaries and related entities and the
4 alter egos of each of the other Defendants named herein, corporate or otherwise, who participated in and
5 are liable for the actions herein alleged. Plaintiff will seek to amend this Complaint to allege the true
6 names and capacities of these DOE Defendants when they are ascertained.

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

10 12. Defendants, and each of them, are now and/or at all times mentioned in this Complaint
11 were members of and/or engaged in a joint employment, joint venture, partnership and common
12 enterprise, and were acting within the course and scope of, and in pursuance of said joint employment,
13 joint venture, partnership and common enterprise.

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

16 14. Defendants proximately caused Plaintiff to be subjected to the unlawful practices,
17 wrongs, complaints, injuries and/or damages alleged in this Complaint.

18 **GENERAL ALLEGATIONS**

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

21 16. Plaintiff worked for Defendants from approximately October 2022 to March 2023 as a
22 non-exempt employee.

23 17. Plaintiff and Aggrieved Employees regularly worked overtime hours over eight (8) hours
24 in a day or forty (40) hours in a week. Defendants entered into an agreement with Plaintiff and
25 Aggrieved Employees to pay them non-discretionary bonuses, such as longevity bonuses. However,
26 Defendants failed to correctly incorporate the value of the non-discretionary bonuses into Plaintiff's and
27 Aggrieved Employees' regular rates of pay for the purpose of paying overtime wages, meal premiums,
28 rest premiums, and paid sick time.

1 18. Plaintiff and Aggrieved Employees did not receive all legally compliant meal and rest
2 periods they were entitled to. Due to the amount of work Defendants required, Plaintiff and Aggrieved
3 Employees were unable to take all meal and rest periods. Plaintiff was reprimanded when he took his
4 breaks because it caused him to return to the warehouse late. Defendants' written rest period policy
5 failed to include "major fraction thereof" language. In addition, it was Defendants' practice to only
6 provide Plaintiff and Aggrieved Employees with a maximum of two rest periods per shift regardless of
7 their hours worked. Defendants paid some meal period premiums, but the premiums were not paid at
8 the correct rate of pay as the value of non-discretionary bonuses was not incorporated.

9 19. Defendants' time records were not accurate as they reflected meal and rest periods that
10 Plaintiff and Aggrieved Employees did not receive. Because Defendants deducted time from Plaintiff's
11 and Aggrieved Employees' hours worked for meal periods they did not receive, they did not receive
12 payment for all hours worked, and therefore are owed unpaid minimum and overtime wages.

13 20. Defendants provided paid sick time through a PTO policy. Defendants' policy was
14 inadequate as Plaintiff and Aggrieved Employees did not accrue at least one hour of paid sick time for
15 every 30 hours they worked. Additionally, Defendants had a policy to begin PTO accrual for Plaintiff
16 and Aggrieved Employees after their one-year anniversary with the company, which failed to provide
17 Plaintiff and Aggrieved Employees with sick time they were entitled to under the law. Defendants'
18 policy was to pay Plaintiff and Aggrieved Employees paid sick time at their base hourly rate of pay
19 instead of the regular rate of pay, which should have incorporated the value of non-discretionary
20 bonuses. Plaintiff and Aggrieved Employees had accrued, but unused PTO at the end of their
21 employment that Defendants failed to pay out.

22 21. Defendants failed to provide Plaintiff and Aggrieved Employees with accurate wage
23 statements. The wage statements Defendants provided did not accurately itemize employees' gross and
24 net wages, meal period premiums, and all applicable hourly rates in effect during the pay period, total
25 hours worked, and the corresponding number of hours worked at each hourly rate.

26 22. At the time of Plaintiff's and Aggrieved Employees' termination or separation, Plaintiff
27 and Aggrieved Employees had overtime, sick time, and meal and rest period premiums owing to them.
28 To date, Defendants have not paid Plaintiff and Aggrieved Employees these wages they are owed.

23. Defendant PITTSBURG WHOLESALE GROCERS, INC. identified Defendant PERI NAVAB in its filings with the California Secretary of State during the claim period as its Chief Executive Officer and a director of the corporation. Plaintiff is informed and believes that PERI NAVAB was responsible for creating and electing to implement PITTSBURG WHOLESALE GROCERS, INC.'s payroll and compensation policies and practices or that PERI NAVAB was aware of such policies and practices and ratified them.

24. Defendant PITTSBURG WHOLESALE GROCERS, INC. identified Defendant DAVID LUTTWAY in its filings with the California Secretary of State during the claim period as its Secretary and Chief Financial Officer as well as a director of the corporation. Plaintiff is informed and believes that DAVID LUTTWAY was responsible for creating and electing to implement PITTSBURG WHOLESALE GROCERS, INC.'s payroll and compensation policies and practices or that DAVID LUTTWAY was aware of such policies and practices and ratified them.

25. Defendant PITTSBURG WHOLESALE GROCERS, INC. identified Defendant REZA NEGHABAT in its filings with the California Secretary of State during the claim period as a director of the corporation. Plaintiff is informed and believes that REZA NEGHABAT was responsible for creating and electing to implement PITTSBURG WHOLESALE GROCERS, INC.'s payroll and compensation policies and practices or that REZA NEGHABAT was aware of such policies and practices and ratified them.

CAUSES OF ACTION
FIRST CAUSE OF ACTION
PRIVATE ATTORNEYS GENERAL ACT
(As to all Defendants)

26. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 25 as though fully set forth herein.

27. Plaintiff has alleged to the Labor Commissioner that Defendants have violated the following provisions of the Labor Code in their dealings with Plaintiff and other similarly situated current and former employees:

- Violation of Labor Code §§ 510, 1194; IWC Wage Order 9, § 3 (Failure to Pay Overtime Wages)

- Violation of Labor Code §§ 1194, 1197.1; IWC Wage Order 9, § 4 (Failure to Pay Minimum Wages)
- Violation of Labor Code §§ 226.7, 512 and Wage Order No. 9, §§ 11(A) and 11(B) (Failure to Provide Meal Periods or Pay Premiums in Lieu Thereof)
- Violation of Labor Code § 226.7 and Wage Order No. 9, § 12(A) (Failure to Provide Rest Periods or Pay Premiums in Lieu Thereof)
- Violation of Labor Code §§ 226, 226.3 (Failure to Provide Accurate Wage Statements)
- Violation of Labor Code §§ 201-203, 256 (Failure to Pay Final Wages)
- Violation of Labor Code §§ 558, 558.1 (Provisions Regulating Hours and Days of Work in Any Industrial Welfare Commission Order)
- Violation of Labor Code §§ 226.3, 1174 (Failure to Maintain Accurate Records)
- Violation of Labor Code §§ 246, 246.5, 248.5 (Failure to Provide Paid Sick Leave)
- Violation of Labor Code § 227.3 (Failure to Pay Vested Vacation Time)

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

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

30. 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.

DAMAGES

WHEREFORE Plaintiff requests relief as follows:

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

- a. For civil penalties as provided in the Labor Code for each enumerated violation;
- b. For those Labor Code sections where there is no civil penalty provided for their violation, the default penalty provided in Labor Code section 2699(f): for any

1 initial violation, one hundred dollars (\$100) for each aggrieved employee per pay
2 period; For any subsequent violation, two hundred dollars (\$200) for each
3 aggrieved employee per pay period;

4 c. Reasonable attorney's fees and costs pursuant to Labor Code section 2699;

5 d. For any other remedies as allowed by law and/or deemed appropriate by the
6 Court;

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9 Dated: July 31, 2023

Shimoda & Rodriguez Law, PC

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11 By: *Brittany Berzin*
12 Galen T. Shimoda
13 Justin P. Rodriguez
14 Brittany V. Berzin
15 Attorneys for Plaintiff
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