

1 Galen T. Shimoda (Cal. State Bar No. 226752)
2 Justin P. Rodriguez (Cal. State Bar No. 278275)
3 Renald Konini (Cal. State Bar No. 312080)
4 **Shimoda & Rodriguez Law, PC**
5 9401 East Stockton Boulevard, Suite 120
6 Elk Grove, CA 95624
7 Telephone: (916) 525-0716
8 Facsimile: (916) 760-3733

9 Attorneys for Plaintiff JASON THAO

ELECTRONICALLY FILED
Superior Court of California
County of Sacramento

02/13/2025

By: A. Gray Deputy

10 **SUPERIOR COURT OF CALIFORNIA**
11 **FOR THE COUNTY OF SACRAMENTO**

12 JASON THAO, individually and on behalf of
13 all other similarly situated employees,

14 Plaintiff,

15 vs.

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

22 Defendants.

Case No. 23CV005801

**FIRST AMENDED COMPLAINT FOR CIVIL
PENALTIES:**

1. Private Attorneys General Act

1 Plaintiff JASON THAO (“Plaintiff”) hereby files this First Amended Complaint against
2 Defendants PITTSBURG WHOLESALE GROCERS, INC., a California Corporation; PERI
3 NAVAB, an individual; DAVID LUTTWAY, an individual; REZA NEGHBAT, an individual; and
4 DOES 1 to 100, inclusive (hereinafter all collectively referred to as “Defendants”). On information
5 and belief, 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. Additionally, Plaintiff gave an amended written notice via
25 online submission to the LWDA on approximately July 1, 2024. Plaintiff provided facts and legal bases
26 for his claims within the notice to the LWDA on all violations asserted under the Private Attorneys
27 General Act cause of action. Plaintiff also submitted the \$75.00 filing fee. The May 26, 2023, notice
28 and the July 1, 2024, notice were also sent via certified mail to Defendants on the same day. To date,

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

8 **PARTIES**

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

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

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

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

26 9. Plaintiff is informed and believes, and thereupon alleges, that REZA NEGHABAT is
27 an individual over the age of eighteen (18) and is a resident of the State of California. Plaintiff
28 further alleges that REZA NEGHABAT is an owner, director, officer, and/or managing agent of

1 PITTSBURG WHOLESALE GROCERS, INC. responsible for causing the violations outlined in this
2 action. As such REZA NEGHABAT is individually liable pursuant to California Labor Code section
3 558.1.

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

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

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

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

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

19 **GENERAL ALLEGATIONS**

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

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

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

Aggrieved Employees' regular rates of pay for the purpose of paying overtime wages, meal premiums, rest premiums, and paid sick time.

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

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

20. Defendants required Plaintiff and similarly situated employees to indicate in the timekeeping system that they received their rest breaks. However, work demands and supervisory pressure to work through breaks often resulted in Plaintiff and similarly situated employees indicating that they took rest breaks in the time keeping system even though this did not occur the majority of the time. Plaintiff is informed and believes that other similarly situated employees indicated that they also took their rest breaks when in fact they did not. Additionally, Defendants did not pay Plaintiff and similarly situated employees for any time past the designated rest period if the time clocked for a break exceeded the designated rest period. Defendants did not communicate that this would occur to Plaintiff and similarly situated employees. Instead, Defendants resorted to self-help to deduct hours worked from Plaintiff and similarly situated employees in these small increments, making it extremely difficult to detect for employees. Defendants did not pay Plaintiff and similarly situated employees for working off the clock during rest breaks and for rest breaks.

21. Defendants provided paid sick time through a PTO policy. Defendants' policy was inadequate as Plaintiff and Aggrieved Employees did not accrue at least one hour of paid sick time for

every 30 hours they worked. Additionally, Defendants had a policy to begin PTO accrual for Plaintiff and Aggrieved Employees after their one-year anniversary with the company, which failed to provide Plaintiff and Aggrieved Employees with sick time they were entitled to under the law. Defendants' policy was to pay Plaintiff and Aggrieved Employees paid sick time at their base hourly rate of pay instead of the regular rate of pay, which should have incorporated the value of non-discretionary bonuses. Plaintiff and Aggrieved Employees had accrued, but unused PTO at the end of their employment that Defendants failed to pay out.

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

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

24. 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.

25. 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.

26. 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)

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

28. 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)

29. 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).

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

31. 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

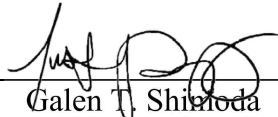
WHEREFORE Plaintiff requests relief as follows:

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 initial violation, one hundred dollars (\$100) for each aggrieved employee per pay period; For any subsequent violation, two hundred dollars (\$200) for each aggrieved employee per pay period;
- c. Reasonable attorney's fees and costs pursuant to Labor Code section 2699;
- d. For any other remedies as allowed by law and/or deemed appropriate by the Court;

Dated: October 4, 2024

Shimoda & Rodriguez Law, PC

By: 
Galen T. Shimoda
Justin P. Rodriguez
Renald Konini
Attorneys for Plaintiff

1 *Thao v. Pittsburg Wholesale Grocers, Inc.*
2 *Sacramento County Superior Court of California 23CV005801*

3 **PROOF OF SERVICE — CCP §§ 1013a and 2015.5**
4 **and California Rules of Court, Rule 1.21 and Rule 2.150**

5 I, Shaniya Baird, declare that:

6 I am a citizen of the United States and am over the age of eighteen years and not a party to
7 the within above-entitled action.

8 On February 13, 2025, I served the following documents on the party below:

9 • **FIRST AMENDED COMPLAINT FOR CIVIL PENALTIES**

10 Donald Sullivan (SBN 191080) 11 Jackson Lewis, P.C. 12 50 California St. 9 th Floor 13 San Francisco, CA 94111 14 Phone: (415) 796-5453 Facsimile: (415) 394-9401 Email: Donald.Sullivan@jacksonlewis.com belinda.vega@jacksonlewis.com	
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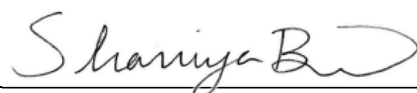
15 [] [By Mail] I am familiar with my employer's practice for the collection and
16 processing of correspondence for mailing with the United States Postal Service
17 and that each day's mail is deposited with the United States Postal Service that
18 same day in the ordinary course of business. On the date set forth above, I served
19 the aforementioned document(s) on the parties in said action by placing a true
copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, for
collection and mailing on this date, following ordinary business practices, at Salt
Lake City, Utah, addressed as set forth above.

20 [] [By Personal Service] By personally delivering a true copy thereof to the office
of the addressee above.

21 [XXX] [By Electronic Mail] I e-mailed the documents(s) to the person(s) shown
22 above. No error was reported by the e-mail service that I used.

23 [] [By Overnight Courier] By causing a true copy and/or original thereof to be
personally delivered via the following overnight courier service:_____.

24 I declare under penalty of perjury under the laws of the State of California that the foregoing
25 is true and correct, and that this declaration was executed on February 13, 2025, at Salt Lake City,
26 Utah.

27 

28 Shaniya Baird