

1 **JUSTICE FOR WORKERS, P.C.**

2 Young K. Park, SB# 287589

3 E-Mail: young@justiceforworkers.com

4 William C. Sung, SB# 280792

5 E-Mail: william@justiceforworkers.com

6 3600 Wilshire Boulevard, Suite 1815

7 Los Angeles, CA 90010

8 Tel: 323-922-2000

9 Fax: 323-922-2000

10 Attorneys for Plaintiff JACOB SALCIDO

E-FILED

10/30/2023 12:46 PM

Superior Court of California

County of Fresno

By: I. Herrera, Deputy

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

12 **FOR THE COUNTY OF FRESNO**

13 JACOB SALCIDO, an aggrieved employee
14 and on behalf of other aggrieved employees;

15 Plaintiff,

16 vs.

17 PB LOADER CORPORATION, a California
18 corporation; and DOES 1 through 50,

19 Defendants.

Case No.: 23CECG04509

**REPRESENTATIVE ACTION
COMPLAINT FOR VIOLATION OF THE
CALIFORNIA PRIVATE ATTORNEYS
GENERAL ACT (LABOR CODE §§ 2698,
et seq.)**

20 Plaintiff JACOB SALCIDO ("Plaintiff"), on behalf of himself as an aggrieved employee,
21 the State of California, and other aggrieved employees, hereby brings this Representative Action
22 Complaint ("Complaint") against Defendants PB LOADER CORPORATION, a California
23 corporation, and DOES 1 to 50 inclusive (collectively "Defendants"), and on information and belief
24 alleges as follows:

25 **JURISDICTION AND VENUE**

26 1. Plaintiff brings this Complaint for recovery of civil penalties under the California
27 Private Attorneys General Act, California Labor Code §§ 2698, et seq. ("PAGA"), for Defendants'
28 violations of the Labor Code and Industrial Welfare Commission ("IWC") Wage Order 1-2001
("Wage Order 1"), including Labor Code §§ 201-204, 226, 226.7, 246, 510, 512, 516, 558, 1182.12,
1194, 1194.2, 1197, 1198, 2802. This Court has jurisdiction over Defendants' violations of the

Labor Code because the amount in controversy exceeds \$25,000.

2. Venue is proper in this judicial district because Defendants maintain offices, have agents, and/or transact business in the State of California, including Fresno County, and some of the acts and omissions complained of herein occurred in Fresno County. Furthermore, Plaintiff was employed by Defendants within Fresno County.

PARTIES

3. Plaintiff is, and at all times relevant herein was, an individual over the age of eighteen (18) and is a California resident. Within the statute of limitations periods applicable to each cause of action pled herein, Plaintiff was employed by Defendants as a non-exempt employee. Plaintiff was, and is, a victim of Defendants' policies, practices, and/or customs complained of herein and has been deprived of the rights guaranteed by Business and Professions Code § 17200, *et seq.*, Labor Code §§ 201-204, 226, 226.7, 246, 510, 512, 516, 558, 1182.12, 1194, 1194.2, 1197, 1198, 2802, and Wage Order 1.

4. Plaintiff is informed and believes, and based thereon alleges, that during the applicable statute of limitations for each cause of action pled herein and continuing to the present, Defendants engage in and continue to engage in business, and employed Plaintiff and other, similarly-situated non-exempt employees within Fresno County, and the State of California and, therefore, were (and are) doing business in Fresno County and the State of California.

5. Plaintiff does not know the true names or capacities, whether individual, partner, or corporate, of the defendants sued herein as DOES 1 to 50, inclusive, and for that reason, said defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to amend this Complaint when such true names and capacities are discovered. Plaintiff is informed, and believes, and based thereon alleges, that each of said fictitious defendants, whether individual, partners, or corporate, was responsible in some manner for the acts and omissions alleged herein, and proximately caused Plaintiff and aggrieved employees to be subject to the unlawful employment practices, wrongs, injuries, and damages complained of herein.

6. At all times herein mentioned, each of said Defendants participated in the doing of the acts hereinafter alleged to have been done by the named Defendant; and furthermore,

1 Defendants, and each of them, were the agents, servants, and employees of each of the other
2 defendants, as well as the agents of all Defendants, and at all times herein mentioned, were acting
3 within the course and scope of said agency and employment.

4 7. Plaintiff is informed and believes, and based thereon alleges, that at all times
5 material hereto, each of the Defendants named herein was the agent, employee, alter ego and/or
6 joint venturer of, or working in concert with each of the other co-Defendants and was acting within
7 the course and scope of such agency, employment, joint venture, or concerted activity. To the extent
8 said acts, conduct, and omissions were perpetrated by certain Defendants, each of the remaining
9 Defendants confirmed and ratified said acts, conduct, and omissions of the acting Defendants.

10 8. At all times herein mentioned, Defendants, and each of them, were members of, and
11 engaged in, a joint venture, partnership, and common enterprise, and acting within the course and
12 scope of, and in pursuance of, said joint venture, partnership, and common enterprise.

13 9. At all times herein mentioned, the acts and omissions of various Defendants, and
14 each of them, concurred and contributed to the various acts and omissions of each and all of the
15 other Defendants in proximately causing the injuries and damages as herein alleged.

16 **FACTUAL ALLEGATIONS**

17 10. Defendants own and operate a construction machinery manufacturing business in
18 Fresno, California. Plaintiff was employed by Defendants as a non-exempt employee within the last
19 12 months in the position of assembler.

20 11. Labor Code §§ 1194, 1197, and Wage Order 1, § 4 entitle employees to receive no
21 less than the minimum wage fixed by the comission or by any applicable state or local law for all
22 hours worked. Labor Code §§ 510, 1198, and Wage Order 1, § 3 provide that non-exempt
23 employees are entitled to all overtime wages at the regular rate of pay. During the relevant time
24 period, Defendants' timekeeping and/or payroll policies and practices resulted in Plaintiff and other
25 aggrieved employees not being compensated for all hours actually worked. Plaintiff and other
26 aggrieved employees regularly worked more than eight hours in a workday or 40 hours in a
27 workweek. Upon information and belief, Defendants required Plaintiff and other aggrieved
28 employees to perform work before their scheduled shifts, after their scheduled shifts, and/or during

1 off-the-clock meal breaks, and failed to compensate employees for this time. Such work included,
2 but was not limited to, waiting in line for at least 5 minutes per shift to clock in or clock out,
3 mandatory pre-shift and post-shift work of at least 10 minutes per shift, and failure to relieve
4 employees of all duties during unpaid meal periods. As a result, Plaintiff and other aggrieved
5 employees were not compensated for all earned minimum and overtime wages.

6 12. Labor Code §§ 226.7, 512, and Wage Order 1, § 11 require employers to provide
7 non-exempt employees with compliant meal periods or pay premiums at the regular rate of
8 compensation. During the relevant time period, Defendants failed to provide Plaintiff and other
9 aggrieved employees with all legally compliant meal periods due to Defendants' meal period
10 policies/practices, which have frequently resulted in late (commencing after the fifth hour of work),
11 short (less than 30 minutes), and/or missed meal periods. Upon information and belief, Plaintiff and
12 other aggrieved employees were not able to take their legally compliant meal breaks due to work
13 demands imposed by Defendants and they were not provided a second meal period when they
14 worked more than 10 hours in workday. Upon information and belief, Defendants do not keep
15 accurate records of Plaintiff's and other aggrieved employees' hours worked, including accurate
16 time records showing when employees take their meal periods. On those occasions when Plaintiff
17 and other aggrieved employees were not provided with all legally compliant meal periods to which
18 they were entitled, Defendants failed to compensate Plaintiff and other non-exempt employees with
19 the required meal period premium(s) for each workday there was a meal period violation as
20 mandated by Labor Code § 226.7. Upon information and belief, Defendants maintained no
21 mechanism for the payment of meal period premium payments as required by Labor Code § 226.7
22 in the event that a legally compliant meal period was not provided to their employees.

23 13. Labor Code §§ 226.7 and Wage Order 1, § 12 require employers to authorize and
24 permit non-exempt employees to take compliant rest periods or pay premiums at the regular rate of
25 compensation. During the relevant time period, Plaintiff and other aggrieved employees were not
26 authorized and permitted to take all required rest periods due to Defendants' unlawful rest period
27 policies/practices, which failed to authorize and permit a net 10-minute rest period for every four
28 hours worked, or major fraction thereof. Plaintiff and other aggrieved employees were not able to

1 take their legally compliant rest breaks due to work demands imposed by Defendants. Additionally,
2 although Plaintiff and other aggrieved employees occasionally worked shifts in excess of 10 hours,
3 Plaintiff and other aggrieved employees were not authorized and permitted a third rest period during
4 shifts in excess of 10 hours. On those occasions when Plaintiff and other aggrieved employees were
5 not authorized and permitted to take all legally compliant rest periods to which they were entitled,
6 Defendants failed to compensate them with the required rest period premium(s) for each workday
7 there was a rest period violation as mandated by Labor Code § 226.7. Upon information and belief,
8 Defendants maintained no mechanism for the payment of rest period premium payments as required
9 by Labor Code § 226.7, in the event that a legally compliant rest period was not authorized and
10 permitted to their non-exempt employees.

11 14. As a result of Defendants' failure to pay all minimum and overtime wages, failure to
12 pay all meal and rest period premium wages, and unlawful timekeeping and payroll practices as
13 alleged above, Defendants maintained inaccurate payroll records and issued inaccurate wage
14 statements to Plaintiff and other aggrieved employees. As a further result of Defendants' failure to
15 pay all minimum and overtime wages, and meal and rest period premium wages, Defendants failed
16 to timely pay all final wages to Plaintiff and other aggrieved employees upon their separation of
17 employment from Defendants.

18 15. Labor Code section 1198 provides: "The employment of any employee ... under
19 conditions of labor prohibited by the [Industrial Wage Orders] is unlawful." Wage Order 1 provides
20 that: "(A) The temperature maintained in each work area shall provide reasonable comfort
21 consistent with industry-wide standards for the nature of the process and the work performed. (B) If
22 excessive heat or humidity is created by the work process, the employer shall take all feasible
23 means to reduce such excessive heat or humidity to a degree providing reasonable comfort. Where
24 the nature of the employment requires a temperature of less than 60° F, a heated room shall be
25 provided to which employees may retire for warmth, and such room shall be maintained at not less
26 than 68° F. (C) A temperature of not less than 68° F shall be maintained in the toilet rooms, resting
27 rooms, and change rooms during hours of use. (D) Federal and State energy guidelines shall prevail
28 over any conflicting provision of this section." California law requires an employer to endeavor to

1 provide a safe and healthy workplace. (Cal. Code Regs., tit. 8, §3203.) Labor Code section 6720
2 required the California Division of Occupational Safety and Health (“Cal/OSHA”) to propose an
3 indoor heat illness standard by January 1,2019. (Lab. Code, § 6720.) Cal/OSHA’s draft standard
4 applies its proposed regulations to “all indoor work areas where the temperature equals or exceeds
5 82 degrees Fahrenheit when employees are present.” During the relevant time period, Defendants
6 own and manage a factory and warehouse, and failed to provide Plaintiff and aggrieved employees
7 with reasonable comfort by maintaining the indoor temperature within the range of industry
8 standards by, inter alia, providing adequate heating, air conditioning, and/or ventilation.

9 16. On or about August 16, 2023, Plaintiff notified Defendants via certified mail, and
10 notified the California Labor and Workforce Development Agency (“LWDA”) via its website, of
11 Defendants’ violations of the Labor Code and Plaintiff’s intent to bring a claim for civil penalties
12 under Labor Code § 2698, *et seq.* with respect to the violations of the Labor Code identified in the
13 preceding paragraph. Now that 33 days and 65 days have passed from Plaintiff notifying
14 Defendants and the LWDA of these violations, Defendants have not cured any curable violations,
15 and the LWDA has not provided notice that it intends to investigate the violations, Plaintiff has
16 exhausted administrative requirements for bringing a claim under the Private Attorneys General Act
17 with respect to these violations.

18 **FIRST CAUSE OF ACTION**

19 **PRIVATE ATTORNEYS GENERAL ACT**

20 **(Against All Defendants)**

21 17. Plaintiff re-alleges and incorporates by reference all preceding paragraphs as though
22 fully set forth herein.

23 18. Plaintiff, an “aggrieved employee” within the meaning of Labor Code § 2698, *et*
24 *seq.*, acting on behalf of himself and other aggrieved employees (collectively, “Aggrieved
25 Employees”), brings this representative action against Defendants to recover the civil penalties due
26 to Plaintiff and other Aggrieved Employees, and the State of California according to proof pursuant
27 to Labor Code § 558 and § 2699(a) and (f) including, but not limited to: (1) \$100.00 for each initial
28 violation for each failure to pay each employee and \$200 for each subsequent violation or willful or

1 intentional violation pursuant to Labor Code § 210 for each failure to pay each employee, plus 25%
2 of the amount unlawfully withheld; (2) \$50.00 for each initial violation and \$100 for each
3 subsequent violation pursuant to Labor Code § 558 per employee per pay period; (3) \$100 for each
4 initial violation and \$250 for each subsequent violation pursuant to Labor Code § 1197.1 per
5 employee per pay period; (4) \$250 for each initial violation and \$1,000 for each subsequent
6 violation pursuant to Labor Code § 226.3 per employee per pay period; (5) pursuant to Labor Code
7 section 256, a civil penalty in an amount not exceeding 30 days per former employee as waiting
8 time under the terms of Labor Code § 203; and/or (6) \$100 for each initial violation and \$200 for
9 each subsequent violation per employee per pay period for those violations of the Labor Code for
10 which no civil penalty is specifically provided, based on the following Labor Code violations:

- 11 a. Failing to pay minimum wages for all hours worked to Aggrieved Employees in
12 violation of Labor Code § 558, 1182.12, 1194, 1194.2, 1197, and 1198;
- 13 b. Failing to pay Aggrieved Employees all earned overtime compensation in violation
14 of Labor Code §§ 204, 510, 558, 1194, and 1198;
- 15 c. Failing to provide all legally required meal periods, and failure to pay meal period
16 premium wages, to Aggrieved Employees at the regular rate of compensation in
17 violation of Labor Code §§ 226.7, 512, 558, and 1198;
- 18 d. Failing to authorize and permit all legally required rest periods, and failure to pay
19 rest period premium wages, to Aggrieved Employees at the regular rate of
20 compensation in violation of Labor Code §§ 226.7, 516, 558, and 1198;
- 21 e. Failing to furnish Aggrieved Employees with complete, accurate, itemized wage
22 statements in violation of Labor Code § 226;
- 23 f. Failing to timely pay all final wages and compensation earned by Aggrieved
24 Employees at the time of separation in violation of Labor Code §§ 201-202;
- 25 g. Failure to reimburse Aggrieved Employees for all necessary business expenses in
26 violation of Labor Code § 2802;
- 27 h. Failing to pay Aggrieved Employees all earned wages at least twice during each
28 calendar month in violation of Labor Code § 204;

- 1 i. Failing to maintain temperature in the workplace that is of reasonable comfort to
2 Aggrieved Employees in violation of Labor Code § 1198; and
3 j. Failing to maintain accurate records on behalf of Aggrieved Employees in violation
4 of Labor Code §§ 1174 and 1198.
5 19. Plaintiff has incurred attorneys' fees and costs, which Plaintiff is entitled to receive
6 under California Labor Code § 2699(g).

7 **PRAYER FOR RELIEF**

8 WHEREFORE, Plaintiff prays for judgment for himself and for all others on whose behalf
9 this suit is brought against Defendants, as follows:

10 1. Upon the First Cause of Action, for civil penalties due to Plaintiff, other Aggrieved
11 Employees, and the State of California according to proof pursuant to Labor Code §§ 558 and
12 2699(a) and (f) including, but not limited to: (1) \$100.00 for each initial violation for each failure to
13 pay each employee and \$200 for each subsequent violation or willful or intentional violation
14 pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the amount
15 unlawfully withheld; (2) \$50.00 for each initial violation and \$100 for each subsequent violation
16 pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial violation
17 and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1 per employee per pay
18 period; (4) \$250.00 for each initial violation and \$1,000.00 for each subsequent violation pursuant
19 to Labor Code § 226.3 per employee per pay period; (5) pursuant to Labor Code section 256, a civil
20 penalty in an amount not exceeding 30 days per former employee as waiting time under the terms of
21 Labor Code § 203; and/or (6) \$100.00 for each initial violation and \$200 for each subsequent
22 violation per employee per pay period for those violations of the Labor Code for which no civil
23 penalty is specifically provided;

24 2. On all causes of action, for attorneys' fees and costs as provided by Labor Code §
25 2699(g) and Code of Civil Procedure § 1021.5; and

26 ///

27 ///

28 ///

1 3. For such other and further relief, the Court may deem just and proper.

2

3 DATED: October 23, 2023

JUSTICE FOR WORKERS, P.C.

4

5

By: 

6

Young K. Park

7

William C. Sung

8

Attorneys for Plaintiff JACOB SALCIDO

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28