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DANIEL JAIMEZ GUTIERREZ, an
individual, on behalf of the State of California
and Aggrieved Employees

Assigned for All Purposes
Judge Lon F. Hurwitz
Dept. CX103

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE**

DANIEL JAIMEZ GUTIERREZ, an
individual, on behalf of the State of
California and Aggrieved Employees,

Plaintiffs,

v.

WHOLESOME CHOICE MARKET, INC.,
a California corporation, KIMIA
KITCHEN, INC., a California corporation,
KIMIA FOOD, INC., a California
corporation, SIVOUSH NAYYERI, an
individual, ARMANDO VALENTIN an
individual, and DOES 1 through 50,
Inclusive,

Defendants.

Case No. 30-2024-01381199-CU-OE-CXC

**COMPLAINT FOR PENALTIES
PURSUANT TO THE CALIFORNIA
PRIVATE ATTORNEYS GENERAL ACT
(LABOR CODE § 2699 ET SEQ.)**

DEMAND FOR JURY TRIAL

Plaintiff DANIEL JAIMEZ GUTIERREZ, an individual, on behalf of the State of California and Aggrieved Employees, complains against Defendants WHOLESOME CHOICE MARKET, INC., a California corporation, KIMIA KITCHEN, INC., a California corporation, KIMIA FOOD, INC., a California corporation, SIVOUSH NAYYERI, an individual, ARMANDO VALENTIN an individual, and DOES 1 through 50, inclusive, as follows:

INTRODUCTION

1. Plaintiff brings this representative enforcement action on behalf of himself and the State of California, as well as on behalf of a group of aggrieved employees, against Defendants WHOLESOME CHOICE MARKET, INC., a California corporation, KIMIA KITCHEN, INC., a California corporation, KIMIA FOOD, INC., a California corporation, SIVOUSH NAYYERI, an individual, and ARMANDO VALENTIN an individual (collectively “Defendants”) for their systematic violations of California labor law with respect to Defendant's general laborers, market employees, produce employees, produce managers, non-exempt hourly employees, or a similar title, in California (the “Aggrieved Employees”).

2. Defendants maintain a longstanding policy and practice of failing to properly compensate non-exempt employees for work performed during meal periods, for work performed while on-the-clock and off-the-clock, and for missed meal and rest periods. These policies deny Plaintiff and Aggrieved Employees payment for all hours worked, including overtime, and deny Plaintiff and Aggrieved Employees meal and rest periods that comply with California law.

3. Defendants violate California law by knowingly and willfully requiring Plaintiff and Aggrieved Employees to perform work at the same location and worksite, but under various entity names, in order to avoid the payment of earned overtime wages, double-time wages and related wage entitlements.

4. Defendants also violate California law by knowingly and willfully requiring Plaintiff and Aggrieved Employees to and/or remain on duty during meal and rest periods, subjecting them to interruption during those times.

5. Defendant requires Aggrieved Employees to manually clock out for their unpaid meal periods, even though Aggrieved Employees remain on duty and are continuously subject to

6. Plaintiff and Aggrieved Employees bring this claim to challenge Defendant's policies and practices of: (1) failing to compensate Plaintiff and Aggrieved Employees for all hours worked; (2) failing to accurately compensate Plaintiff and Aggrieved Employees for earned overtime and double-time wages; (3) failing to authorize and permit Plaintiff and Aggrieved Employees to take meal breaks to which they are entitled by law; (4) failing to authorize and permit Plaintiff and Aggrieved Employees to take rest breaks to which they are entitled by law; (5) failing to provide Plaintiff and Aggrieved Employees accurate, itemized wage statements; (6) failing to timely pay Plaintiff and the Aggrieved Employees all wages due to them at the time of termination or resignation; and (7) failing to compensate Plaintiff and Aggrieved Employees for missed meal and rest periods.

PARTIES

7. Plaintiff DANIEL JAIMEZ GUTIERREZ (hereafter “Plaintiff” or “Mr. Gutierrez”) is an individual, over the age of eighteen, and at all relevant times, has been a resident of the County of Orange, State of California.

8. Defendant WHOLESOME CHOICE MARKET, INC., is a California corporation, (hereinafter “Wholesome”) with its principal place of business in the County of Orange, State of California.

9. Defendant KIMIA KITCHEN, INC., is a California corporation, (hereinafter “Kimia Kitchen”) with its principal place of business in the County of Orange, State of California.

10. Defendant KIMIA FOOD, INC., is a California corporation, (hereinafter “Kimia Food”) with its principal place of business in the County of Orange, State of California.

11. Defendant SIVOUSH NAYYERI, (“Mr. Nayyeri”) is an individual, residing in the County of Orange, State of California.

12. Defendant ARMANDO VALENTIN, (“Mr. Valentin”) is an individual, residing in the County of Orange, State of California.

13. Plaintiff is informed and believes and based thereon alleges that Defendants Nayyeri

1 and Valentin formed, authorized, and carried out all of Defendants Wholesome, Kimia Food and
2 Kimia Kitchen's employment policies, including its payroll policies, that have caused the Labor
3 Code violations complained of in this action. Accordingly, Defendants Nayyeri and Valentin are
4 individually liable for the Labor Code violations alleged in this action under Labor Code section
5 558.1, and as set forth in *Seviour-Iloff v. LaPaille* (2022) 80 Cal.App.5th 427, 443.

6 14. The true names and capacities, whether individual, corporate, associate, or
7 otherwise, of Defendant used herein as DOES 1 to 50, inclusive, are currently unknown to
8 Plaintiffs, who therefore sues Defendants by such fictitious names under Code of Civil Procedure
9 § 474. Plaintiff is informed and believes, and based thereon alleges, that each Defendant designated
10 herein as a DOE is legally responsible in some manner for the unlawful acts referred to herein.
11 Plaintiff will seek leave of court to amend this Complaint to reflect the true names and capacities
12 of the Defendants designated hereinafter as DOES when such identities become known.

13 15. Plaintiff is informed and believes, and based thereon alleges, that each Defendant
14 acted in all respects pertinent to this action as the agent and/or the alter-ego of the other Defendants,
15 carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of
16 each Defendant are legally attributable to the other Defendants.

17 16. Furthermore, Defendants, and each of them, acted in all respects as the employers
18 or joint employers of Plaintiff. Defendants, and each of them, exercised control over the wages,
19 hours or working conditions of Plaintiff, or suffered or permitted Plaintiff to work, or engaged,
20 thereby creating a common law employment relationship, with Plaintiff. Therefore, Defendants,
21 and each of them, employed or jointly employed Plaintiff.

22 17. Plaintiff is informed and believes, and based thereon alleges, that at all relevant
23 times, Defendant, including DOES 1 through 50, was and is the agent, servant, representative,
24 independent contractor, partner, joint venturer, alter ego and/or employee of each or some of the
25 other co-defendants, and in doing these acts herein referred to, each Defendant was acting within
26 the course and scope of his authority as such agent, servant, representative, independent contractor,
27 partner, co-conspirator, joint employer, alter ego and/or employee with the express and/or implied
28 approval, permission, knowledge, consent, and/or ratification of other co-defendants, and are in

some manner responsible for the occurrences hereinafter alleged and as such, Defendants are jointly and severally liable for the injuries and damages hereinafter described.

FACTUAL ALLEGATIONS

18. Mr. Gutierrez was hired by Defendants in February 2020 as a general laborer in Defendants' produce department, performing exclusively non-exempt duties under Defendants' supervision.

19. Mr. Gutierrez, and other Aggrieved Employees, performed exclusively nonexempt tasks in Defendants' grocery store and restaurant under the supervision and control of Defendants' management, including Sivoush Nayyeri and Armando Valentin, among others.

20. Plaintiff generally worked six (6) days per week, and would begin work at 6:00 a.m., and work until 9:00 p.m., or, later per the demands of Defendants' management.

21. Throughout his and their employment, Mr. Gutierrez and the other Aggrieved Employees have not been accurately paid overtime wages for shifts in excess of 8 hours per day or 40 hours per week; or double time wages for shifts in excess of 12 hours per day.

22. Instead, Defendants would pay Mr. Gutierrez and the other Aggrieved Employees through various companies, including (1) Wholesome Choice Market, Inc.; (2) Kimia Food, Inc.; (3) Kimia Kitchen, Inc.; and DOES 1 through 50.

23. However, Plaintiff and the Aggrieved Employees were working in the same location and grocery store at all relevant times, and Defendants effort to pay them through various entities was designed to avoid paying Plaintiff and the Aggrieved Employees with their earned overtime wages.

24. Moreover, Plaintiff and the Aggrieved Employees were denied accurate itemized wage statements, such that the wage statements they actually received did not include the accurate number of hours that they actually worked, or the accurate gross pay they earned and were entitled to earn, among other errors.

25. As a result of Defendants' illegal payroll policy of paying the Aggrieved Employees through various entities as though they were working regular hours for multiple companies on the same day, Plaintiff and the Aggrieved Employees were denied the accurate payment of regular and

1 overtime wages throughout his and their employment, and their wage statements, rarely, if ever,
2 accurately stated the number of hours that Plaintiff and the aggrieved employees worked in a given
3 pay period.

4 26. Defendants knowingly denied Plaintiff and other Aggrieved Employees the accurate
5 payment of their overtime wages, accurate itemized wage statements and related wage entitlements
6 in order to reduce their business expenses, including their payroll tax liability and liability for wages
7 to their employees.

8 27. Plaintiff and other Aggrieved Employees were also denied uninterrupted meal and
9 rest breaks as a result of under-staffing and demands of management.

10 28. Pursuant to Labor Code § 226.7 and Wage Order 16-2001, Defendants failed to
11 provide Plaintiff and the aggrieved employees with rest breaks of not less than ten (10) minutes per
12 four (4) hour work period, or major fraction thereof.

13 29. On a regular and consistent basis, Defendants failed to provide Plaintiff and the
14 aggrieved employees with rest periods despite regularly requiring Plaintiff and the aggrieved
15 employees to work over eight (8) hours.

16 30. Defendants also failed to provide Plaintiff and his coworkers with uninterrupted
17 meal periods of not less than 30 minutes for every work period of five hours or more.

18 31. As such, Defendants failed to provide Plaintiff and the aggrieved employees with
19 compliant meal and rest periods.

20 32. Further, Plaintiff and the aggrieved employees were not compensated with one (1)
21 hour of wages for each missed meal period and for each rest period as required by Labor Code §
22 226.7.

23 33. Labor Code §226(a) requires that every employer shall, semimonthly or at the time
24 of each payment of wages, furnish each of his or her employees, an accurate itemized statement in
25 writing showing a number of specified requirements, including total hours worked by the employee,
26 all deductions, net wages earned, and all applicable hourly rates in effect during the pay period and
27 the corresponding number of hours worked at each hourly rate by the employee, among other
28 requirements.

34. Defendants failed to issue Plaintiff and the aggrieved employees with itemized wage statements that accurately reflected the number of hours that he and they worked, or their accurate amount of earned wages, as well as other violations of the Labor Code.

35. As such, Plaintiff and his coworkers are aggrieved employees within the meaning of PAGA and Defendants have violated Labor Code §226(a) with respect to Plaintiff and the other Aggrieved Employees.

36. Upon information and belief, Defendants have also denied Aggrieved Employees the full payment of their wages, including overtime wages, as well as premium pay for missed meal and rest periods, at the time of their termination and/or resignation in violation of the Labor Code sections 201 and 203.

FIRST CAUSE OF ACTION

**[Individual and Representative Claim per Labor Code §§ 2699 et seq. for
Unlawful Labor Practices in Violation of Labor Code §§ 201, 202, 203, 226(a), 226.3, 226.7,
226.8, 246, 510, 551, 552, 558, 558.1, 1102.5, 1174, 1174.5, 1194, and 1199]
(Against All Defendants and DOES 1 through 50)**

37. Plaintiff hereby incorporates and realleges each and every preceding paragraph of this Complaint as if the same were set forth at length herein.

38. Plaintiff Mr. Gutierrez is an aggrieved employee as defined in Labor Code §2699(a).

39. Plaintiff brings this cause of action pursuant to the California Private Attorneys General Act of 2004 (“PAGA”), Cal. Labor Code § 2699 et seq. on behalf of himself and the State of California, as well as on behalf of a group defined above as Aggrieved Employees.

40. Plaintiff is informed and believes and based thereon alleges that Defendants Nayyeri and Valentin formed, authorized, and carried out all of Defendants Wholesome, Kimia Food and Kimia Kitchen’s employment policies, including its payroll policies, that have caused the Labor Code violations complained of in this action. Accordingly, Defendants Nayyeri and Valentin are individually liable for the Labor Code violations alleged in this action under Labor Code section 558.1, and as set forth in *Seviour-Iloff v. LaPaille* (2022) 80 Cal.App.5th 427, 443.

41. Pursuant to California Labor Code section 2699 et seq. the foregoing violations of

1 Labor Code sections: 201, 202, 203, 226(a), 226.3, 226.7, 226.8, 246, 510, 551, 552, 558, 558.1,
2 1102.5, 1174, 1174.5, 1194, and 1199, permit Plaintiff Mr. Gutierrez, on behalf of the State of
3 California, to recover civil penalties through this current action, on behalf of himself and on behalf
4 of the other current and former employees of Defendants.

5 42. Plaintiff Mr. Gutierrez has complied with the procedural requirements specified in
6 California Labor Code section 2699 et seq.

7 43. On November 30, 2023, Plaintiff, pursuant to Labor Code section 2699 et seq.
8 through Plaintiff's attorneys, submitted his online complaint and PAGA Notice to the Labor and
9 Workforce Development Agency and was assigned LWDA case number LWDA-CM-997186-23.

10 44. On November 30, 2023, Plaintiff, pursuant to Labor Code section 2699 et seq.
11 through Plaintiff's attorneys, served Plaintiff's PAGA Notice to Defendants via certified mail.

12 45. Through the date of the filing of this action, the Labor and Workforce Development
13 Agency has not notified Plaintiff or his attorneys that the agency intends to pursue the allegations
14 set forth and identified in Plaintiff's PAGA notice.

15 46. Accordingly, the time periods set forth in Labor Code § 2699 et seq for the Labor
16 and Workforce Development Agency to notify Plaintiff of its intent to pursue the allegations in
17 Plaintiff's notice have elapsed and Plaintiff may file the instant Complaint and include a cause of
18 action pursuant to Labor Code section 2699 et seq.

19 47. As a result of the aforementioned violations, Plaintiff hereby brings this cause of
20 action on behalf of himself and on behalf of all other current or former employees affected by the
21 Labor Code violations alleged in this Complaint.

22 48. Pursuant to California Labor Code Section 2699 et seq., Plaintiff and the Aggrieved
23 Employees should be awarded twenty-five percent (25%) of all penalties due under California law,
24 as well as interest, attorneys' fees, and costs.

25 49. Pursuant to California Labor Code Section 2699 et seq., the Court should award
26 seventy-five percent (75%) of the penalties due under California law to the State of California.

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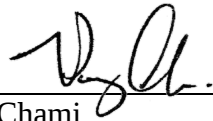
PRAYER FOR JUDGMENT

WHEREFORE, Plaintiff prays for judgment against Defendants, and each of them, as follows:

1. For civil penalties to the full extent provided for pursuant to Labor Code section 2699 et seq. of the Private Attorneys General Act of 2004.
2. For an award of reasonable attorneys' fees as provided by the California Labor Code including Labor Code § 2699(g)(1); California Code of Civil Procedure §1021.5; and/or any other applicable law.
3. For interest on any penalties awarded, as provided by applicable law.
4. For costs of suit incurred herein.
5. For such other and further relief as this Court may deem just and proper.

CHAMI LAW, PC

DATED: April 22, 2021

Bv: 
Pouya B. Chami
Attorney for Plaintiff DANIEL JAIMEZ
GUTIERREZ