

1 DOUGLAS HAN (SBN 232858)
2 SHUNT TATAVOS-GHARAJEH (SBN 272164)
3 ARSINÉ GRIGORYAN (SBN 319517)
4 **JUSTICE LAW CORPORATION**
5 751 N. Fair Oaks Avenue, Suite 101
6 Pasadena, California 91103
7 Telephone: (818) 230-7502
8 Facsimile: (818) 230-7259

9 *Attorneys for Plaintiff*

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF SANTA CLARA**

12 JACOB BLEA, individually, and on behalf of
13 aggrieved employees pursuant to the Private
14 Attorneys General Act (“PAGA”);

15 Plaintiff,

16 v.

17 PACIFIC GROSERVICE INC., a California
18 corporation; PITTSBURG WHOLESALE
19 GROCERS, INC. d/b/a PITCO FOODS, a
20 California corporation; and DOES 1 through
21 100, inclusive;

22 Defendants.

Case No.: **20CV375150**

**COMPLAINT FOR CIVIL PENALTIES
FOR VIOLATION OF LABOR CODE
§ 2698 et seq. (PRIVATE ATTORNEYS
GENERAL ACT OF 2004)**

1 Plaintiff Jacob Blea (“Plaintiff”) hereby submits his Complaint against Defendants Pacific
2 Groservice Inc.; Pittsburg Wholesale Grocers, Inc. d/b/a Pitco Foods; and DOES 1 through 100,
3 inclusive; (collectively, “Defendants”), on behalf of himself and other current and former
4 aggrieved employees of Defendants for penalties as follows:

5 **INTRODUCTION**

6 1. This representative action is brought pursuant to Labor Code § 2698 *et seq.*
7 (the Private Attorneys General Act of 2004 (“PAGA”)) for Defendants’ violations of Labor Code
8 §§ 201, 202, 203, 204, 218.5, 221, 226(a), 226.3, 226.7, 510, 512(a), 558, 1174(d), 1194, 1197,
9 1197.1, 1198, 2800 and 2802.

10 2. This Complaint challenges Defendants’ systemic illegal employment
11 practices resulting in violations of the stated provisions of the Labor Code against the identified
12 group of employees.

13 3. Plaintiff is informed and believes and thereon alleges Defendants jointly
14 and severally acted intentionally and with deliberate indifference and conscious disregard to the
15 rights of all employees in (1) failing to pay all meal period wages and rest break wages, (2) failing
16 to properly calculate and pay all minimum and overtime wages, (3) failing to provide accurate
17 wage statements, (4) failing to pay all wages due and owing during employment and upon
18 termination of employment, and (5) failing to reimburse all necessary business expenses.

19 **JURISDICTION AND VENUE**

20 4. This action is brought pursuant to PAGA. The civil penalties sought by
21 Plaintiff exceed the minimal jurisdiction limits of the Superior Court and will be established
22 according to proof at trial.

23 5. This Court has jurisdiction over this action pursuant to California
24 Constitution, Article VI, Section 10, which grants the Superior Court original jurisdiction in all
25 causes except those given by statute to other courts. The statutes under which this action is
26 brought do not specify any other basis for jurisdiction.

27 ///

28 ///

1 **16.** On August 19, 2020,¹ Plaintiff provided written notice to the LWDA and
2 Defendants of the specific provisions of the Labor Code he contends were violated, and the
3 theories supporting his contentions. Plaintiff believes that on or about October 23, 2020, the sixty-
4 five (65) days’ notice period expired, and the LWDA did not take any action to investigate or
5 prosecute this matter. Attached hereto as **Exhibit 1** and incorporated by reference is a copy of
6 the written notice to the LWDA. Therefore, Plaintiff exhausted the statutory time period to bring
7 this action.

8 **17.** Plaintiff and the other hourly-paid or non-exempt employees are
9 “aggrieved employees” as defined by California Labor Code § 2699(c) in that they are all current
10 or former employees (whether hired directly or through staffing agencies) of Defendants who
11 worked for Defendants at any time during the period from August 19, 2019 to the present, and
12 one or more of the alleged violations was committed against them.

13 **Failure to Pay Minimum and Overtime Wages**

14 **18.** At all times relevant herein, Defendants were required to compensate their
15 non-exempt employees minimum wages for all hours worked and overtime wages for all hours
16 worked in excess of eight (8) hours in a day or forty (40) hours in a workweek, pursuant to the
17 mandate of Labor Code §§ 510, 1194, 1197, and 1198.

18 **19.** As a policy and practice, Defendants failed to compensate Plaintiff and
19 other aggrieved current and former employees for all hours worked, resulting in a failure to pay
20 all minimum wages and overtime wages, where applicable.

21 ///

22 ///

23 ///

24
25
26
27 ¹ Per Emergency Rule 9 (Tolling statute of limitations for civil causes of action) of the Judicial Council’s
28 Emergency Rules Related to COVID-19, all statute of limitations for civil causes of action that exceed 180
days are tolled from April 6, 2020 until October 1, 2020. Therefore, the one (1) year statute of limitations
for Plaintiff’s PAGA cause of action was tolled during this time period.

1 **Failure to Provide Meal Periods and Rest Breaks**

2 **20.** In accordance with the mandates of Labor Code §§ 226.7 and 512,
3 Defendants were required to authorize and permit their non-exempt employees to take a 10-
4 minute rest break for every four (4) hours worked or major fraction thereof, and were further
5 required to provide their non-exempt employees with a 30-minute meal period for every five (5)
6 hours worked.

7 **21.** As a policy and practice, Defendants failed to provide Plaintiff and other
8 aggrieved current and former employees with legally-mandated meal periods and rest breaks and
9 failed to pay proper compensation for this failure.

10 **Failure to Timely Pay Wages During Employment**

11 **22.** At all times relevant herein, Defendants were required to pay their
12 employees within a specified time period pursuant to the mandate of Labor Code § 204.

13 **23.** As a policy and practice, Defendants failed to pay Plaintiff and other
14 aggrieved current and former employees all wages due and owing them within the required time
15 period.

16 **Failure to Timely Pay Wages Upon Termination**

17 **24.** At all times relevant herein, Defendants were required to pay their
18 employees all wages owed in a timely fashion at the end of employment pursuant to California
19 Labor Code §§ 201 to 204.

20 **25.** As a result of Defendants’ Labor Code violations alleged above,
21 Defendants failed to pay Plaintiff and the other aggrieved former employees their final wages
22 pursuant to Labor Code §§ 201 to 204 and accordingly owe waiting time penalties pursuant to
23 Labor Code § 203.

24 **Failure to Provide Complete and Accurate Wage Statements**

25 **26.** At all times relevant herein, Defendants were required to keep *accurate*
26 records regarding their California employees pursuant to the mandate of Labor Code §§ 226 and
27 1174.

28 ///

EXHIBIT 1

August 19, 2020

BY U.S. EMAIL/ELECTRONIC SUBMISSION

PAGAFilings@dir.ca.gov
State of California
Labor & Workforce Development Agency
800 Capitol Mall, MIC-55
Sacramento, California 95814

**Re: PACIFIC GROSERVICE INC. AND PITTSBURG WHOLESALE GROCERS, INC.
D/B/A PITCO FOODS**

Dear Representative:

We have been retained to represent Jacob Blea against Pacific Groservice Inc. and Pittsburg Wholesale Grocers, Inc. d/b/a PITCO Foods (including any and all affiliates, managers, members, subsidiaries, and parents, and their shareholders, officers, directors, and employees), any individual, owner, officer and managing agent, DOES 1-10 as an "Employer" or person acting on behalf of an "Employer" pursuant to California Labor Code section 558.1, and DOES 11-20¹ for violations of California wage-and-hour laws (hereinafter collectively referred to as "PITCO").

Mr. Blea is pursuing his California Labor Code section 2698, *et seq.*, the Private Attorneys General Act of 2004 ("PAGA") claim on a representative basis. Therefore, Mr. Blea may seek penalties and wages for violations of the Labor Code on behalf of the State of California and aggrieved employees, which are recoverable under PAGA. This letter is sent in compliance with the reporting requirements of California Labor Code section 2699.3.

Pacific Groservice Inc. and Pittsburg Wholesale Grocers, Inc. d/b/a PITCO Foods are California corporations located at 567 Cinnabar St., San Jose, California 95110.

///

///

///

¹ Mr. Blea does not know the true names or capacities, whether individual, partner or corporate, of DOES 1 through 20, inclusive, and for that reason, said DOES are designated under such fictitious names. Mr. Blea will amend this notice when the true names and capacities are known. Mr. Blea is informed and believes that each DOE was responsible in some way for the matters alleged herein and proximately caused Mr. Blea and other current and former aggrieved employees to be subject to the illegal employment practices, wrongs and injuries complained of herein.

PITCO employed Mr. Blea as an hourly-paid non-exempt Stocker and Driver/Helper within one year of the date of this letter (until in or about October of 2019²) in the State of California. PITCO directly controlled the wages, hours and working conditions of Mr. Blea's employment.

The "aggrieved employees" that Mr. Blea may seek penalties on behalf of are all current and former hourly-paid or non-exempt employees (whether hired directly or through staffing agencies) of PITCO within the State of California.

PITCO failed to properly pay its hourly-paid or non-exempt employees for all hours worked, failed to properly provide or compensate minimum and overtime wages and for meal and rest breaks, failed to issue compliant wage statements and failed to reimburse for all necessary business-related costs and expenses, thus resulting in other Labor Code violations as stated below.

Pursuant to *Huff v. Securitas Security Services*, 23 Cal. App. 5th 745, 751 (2018), an employee who brings a representative action and was affected by at least one of the violations alleged in the complaint has standing to pursue penalties on behalf of the state not only for that violation, but for violations affecting other employees as well. Accordingly, Mr. Blea has standing to pursue penalties on behalf of the state for violations affecting all the aggrieved employees at PITCO, regardless of their classification, job title, locations, or whether they were hired directly or through a labor contractor or staffing agency.

PITCO has violated and/or continues to violate, among other provisions of the California Labor Code and applicable wage law, California Labor Code sections 201, 202, 203, 204, 218.5, 221, 226(a), 226.3, 226.7, 510, 512(a), 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802, and the IWC Wage Orders.

///

///

///

² Per Emergency Rule 9 (Tolling statute of limitations for civil causes of action) of the Judicial Council's Emergency Rules Related to COVID-19, all statute of limitations for civil causes of action that exceed 180 days are tolled from April 6, 2020 until October 1, 2020. Therefore, the one (1) year statute of limitations for Mr. Blea's PAGA cause of action is tolled.

California Labor Code sections 510, 1194, and 1198 require employers to pay at least minimum wage for all hours worked, pay time-and-a-half, or double time overtime wages, and make it unlawful to work employees for hours longer than eight hours in one day and/or over forty hours in one week without paying the premium overtime rates. During the relevant time period, Mr. Blea and other aggrieved employees routinely worked in excess of 8 hours in a day and 40 hours in a week. PITCO failed to compensate Mr. Blea and other aggrieved employees for all hours worked and performing off-the-clock work, including pre- and post-shift, and during meal breaks. PITCO also failed to include non-discretionary bonuses and incentives in aggrieved employees' regular rate of pay for purposes of overtime compensation. Moreover, PITCO automatically deducted thirty minutes for meal breaks from Mr. Blea and other aggrieved employees' time regardless whether they were provided with breaks. Therefore, Mr. Blea and other aggrieved employees were entitled to receive certain wages for overtime compensation, but they were not paid for all overtime hours worked.

California Labor Code sections 226.7 and 512 require employers to pay an employee one additional hour of pay at the employee's regular rate for each workday that a meal or rest break is not provided. During the relevant time period, PITCO routinely required Mr. Blea and other aggrieved employees to work through, interrupt, cut short, and/or delay their meal and rest breaks to comply with PITCO policies and expectations. Mr. Blea and other aggrieved employees were also prevented from taking their meal and rest breaks because PITCO assigned them routes with too many stops and they could not make all their deliveries within their strict time windows if they took their breaks. Moreover, PITCO failed to authorize and permit Mr. Blea and other aggrieved employees to take the requisite number of meal and rest breaks, including second meal breaks and third rest breaks, when working shifts exceeding 10 hours in length. Despite these facts, PITCO failed to compensate Mr. Blea and other aggrieved employees all the premium wages they were owed.

///

///

///

California Labor Code section 201 requires that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. California Labor Code section 202 requires that if an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. California Labor Code section 203 provides that if an employer willfully fails to pay, without abatement or reduction, in accordance with Labor Code sections 201, 201.3, 201.5, 201.6, 201.8, 201.9, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days. During the relevant time period, PITCO failed to pay Mr. Blea and other aggrieved employees all wages due to them within any time period specified by California Labor Code sections 201 and 203, including for all hours worked, uncompensated off-the-clock work and premium wages for failing to provide legally mandated meal and rest breaks, and therefore is liable under California Labor Code section 203.

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. During the relevant time period, PITCO failed to pay Mr. Blea and other aggrieved employees all wages due to them within any time period specified by California Labor Code section 204, including for all hours worked, uncompensated off-the-clock work and premium wages for failing to provide legally mandated meal and rest breaks.

///

///

///

LWDA

August 19, 2020

Page 5 of 7

California Labor Code section 226 requires employers to make, keep and provide complete and accurate itemized wage statements to their employees. During the relevant time period, PITCO did not provide Mr. Blea and other aggrieved employees with complete and accurate itemized wage statements. The wage statements they received from PITCO were in violation of California Labor Code section 226(a). The violations include, but are not limited to, the failure to include (1) gross wages earned by Mr. Blea and other aggrieved employees, (2) total hours worked by Mr. Blea and other aggrieved employees, (3) the number of piece-rate units earned and any applicable piece rate by Mr. Blea and other aggrieved employees (4) all deductions for Mr. Blea and other aggrieved employees, (5) net wages earned by Mr. Blea and other aggrieved employees, (6) the inclusive dates of the period for which Mr. Blea and other aggrieved employees are paid, (7) the name of the aggrieved employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by Mr. Blea and other aggrieved employees.

California Labor Code section 558 allows recovery of penalties. (a) Any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (3) Wages recovered pursuant to this section shall be paid to the affected employee. Mr. Blea and other aggrieved employees have been denied their wages and premium wages and, therefore, are entitled to penalties.

California Labor Code sections 1174(d) requires an employer to keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept with rules established for this purpose by the commission, but in any case, shall be kept on file for not less than two years. During the relevant time period, PITCO failed to keep accurate and complete payroll records showing the hours worked daily and the wages paid, to Mr. Blea and other aggrieved employees.

///

California Labor Code sections 1194, 1197 and 1197.1 provide the minimum wage to be paid to employees, and the payment of a lesser wage than the minimum so fixed is unlawful. During the relevant time period, PITCO did not provide Mr. Blea and other aggrieved employees with the minimum wages to which they were entitled despite constructive and actual knowledge of failing to pay them for all hours worked and off-the-clock work, including pre- and post-shift and during meal breaks.

California Labor Code sections 2800 and 2802 require an employer to reimburse its employee for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her job duties or in direct consequence of his or her obedience to the directions of the employer. During their employment, Mr. Blea and other aggrieved employees incurred necessary business-related expenses and costs that were not fully reimbursed by PITCO, including for using their personal cellular phones for GPS and communicating with dispatch and purchasing gear they were required to wear while working.

We believe that Mr. Blea and other current and former California-based hourly-paid or non-exempt employees are entitled to penalties and wages as allowed under California Labor Code section 2698, *et seq.* for violations of Labor Code sections 201, 202, 203, 204, 218.5, 221, 226(a), 226.3, 226.7, 510, 512(a), 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802, and the IWC Wage Orders.

California Labor Code section 2699.3 requires that a claimant send a certified letter to the employer in questions and the California Labor & Workforce Development Agency setting forth the claims, and the basis for the claims, thereby giving the California Labor & Workforce Development Agency an opportunity to investigate the claims and/or take any action it deems appropriate.

The purpose of this letter is to satisfy the requirement created by California Labor code section 2699 prior to seeking penalties allowed by law for the aforementioned statutory violations. We look forward to determining whether California Labor & Workforce Development Agency intends to take any action in reference to these claims. We kindly request that you respond to this notice according to the time frame contemplated by the California Labor Code.

Mr. Blea will seek these penalties and wages on his own behalf and on behalf of other similarly situated California-based hourly-paid or non-exempt employees of PITCO within one year of the date of this letter, as allowed by law.

///

///

LWDA
August 19, 2020
Page 7 of 7

If you have any questions or require additional information, please do not hesitate to contact us. Thank you for your attention to this matter and the noble cause you advance each and every day.

Very truly yours,

JUSTICE LAW CORPORATION

A handwritten signature in black ink, appearing to read "D. Han", written over a light gray rectangular background.

Douglas Han, Esq.

CC: (By Certified U.S. Mail Only):

Registered Agent Solutions, Inc.
c/o Pacific Groservice Inc. and Pittsburg Wholesale Grocers, Inc. d/b/a PITCO Foods
1220 S. Street, Suite 150
Sacramento, California 95811
*Agent for Service of Process for Pacific Groservice Inc. and Pittsburg Wholesale Grocers, Inc.
d/b/a PITCO Foods*