

Joseph Lavi, Esq. (SBN 209776)
Vincent C. Granberry, Esq. (SBN 276483)
Pooja v. Patel, Esq. (SBN 317891)
Courtney Miller, Esq. (SBN 327850)
LAVI & EBRAHIMIAN, LLP
8889 W. Olympic Blvd., Suite 200
Beverly Hills, California 90211
Telephone: (310) 432-0000
Facsimile: (310) 432-0001
Email: jlavi@lelawfirm.com
vgranberry@lelawfirm.com
ppatel@lelawfirm.com
cmiller@lelawfirm.com
whtl@lelawfirm.com

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO

JAN 25 2023

BY: Khayara Frontela
Khayara Frontela, Deputy

Attorneys for Plaintiff BRYAN A. HERNANDEZ BAHENA,
on behalf of himself and current and former aggrieved employees

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO**

BRYAN A. HERNANDEZ BAHENA, on
behalf of himself and other aggrieved
employees,

Plaintiff,

vs.

BERRY GLOBAL FILMS, LLC; and DOES 1
to 100, inclusive,

Defendants.

Case No.: **CIV SB 2303384**

PAGA ACTION

**PLAINTIFF BRYAN A.
HERNANDEZ BAHENA,'S
COMPLAINT FOR:**

- 1. CIVIL PENALTIES PURSUANT
TO THE PRIVATE ATTORNEYS
GENERAL ACT OF 2004
("PAGA"), LABOR CODE
SECTIONS 2698, ET SEQ.**

COMES NOW Plaintiff BRYAN A. HERNANDEZ BAHENA ("Plaintiff"), who alleges
and complains against Defendants BERRY GLOBAL FILMS, LLC; and DOES 1 to 100,
inclusive (collectively "Defendants") as follows:

I. INTRODUCTION

1. This is a Private Attorneys General Act of 2004, Labor Code §§ 2698, *et seq.*
("PAGA") representative action brought by Plaintiff on behalf of the State of California, himself
and other current and former aggrieved employees of Defendants who worked as hourly non-
exempt employees in California during the relevant time period seeking civil penalties associated

1 with Defendants' violation of the Labor Code based on Defendants' failure to pay all overtime
2 hours worked at the proper overtime rate of pay; failure pay meal period premium wages at the
3 regular rate of compensation; failure to pay rest period premium wages at the regular rate of
4 compensation; statutory penalties for failure to timely pay earned wages during employment;
5 statutory penalties for failure to provide accurate wage statements; statutory waiting time penalties
6 in the form of continuation wages for failure to timely pay employees all wages due upon
7 separation of employment. Plaintiff seeks on a representative basis, following notice to the Labor
8 and Workforce Development Agency, civil penalties, reasonable attorneys' fees pursuant to Labor
9 Code section 2699(g)(1) and costs brought on behalf of Plaintiff, the State of California, and
10 others aggrieved.

11 **II. JURISDICTION AND VENUE**

12 2. This Court has jurisdiction over the claims of Plaintiff and all other current and
13 former aggrieved California-based hourly non-exempt employees because Plaintiff's lawsuit seeks
14 civil penalties on behalf of herself, all other current and former aggrieved California-based hourly
15 non-exempt employees, and the State of California in excess of twenty-five thousand dollars
16 (\$25,000); Defendants employed Plaintiff and all other current and former aggrieved California-
17 based hourly non-exempt employees; and the injuries to Plaintiff and all other current and former
18 aggrieved California-based hourly non-exempt employees occurred in locations throughout
19 California, including but not limited to San Bernardino County, at 1400 Monte Vista Ave., Chino,
20 California 91710.

21 3. In response to the COVID-19 pandemic, the Judicial Council of California enacted
22 Emergency Rule 9 to the California Rules of Court, which provided that, notwithstanding any
23 other law, the statutes of limitations and repose for civil causes of action that exceed 180 days are
24 tolled from April 6, 2020, until October 1, 2020.

25 **III. PARTIES**

26 4. Plaintiff brings this action as a representative of the Labor and Workforce
27 Development Agency on behalf of himself and other current and former employees subject to
28 violations of the Labor Code. The named Plaintiff and the persons on whose behalf this action is

1 filed include current, former and/or future employees of Defendants who work, worked, or will
2 work for Defendants as direct employees as well as temporary employees employed through temp
3 agencies as hourly non-exempt employees in California. At all times mentioned herein, the
4 currently named Plaintiff is and was domiciled and a resident and citizen of California and was
5 employed by Defendants in an hourly position at Defendants' location in San Bernardino in a
6 packager position, from in or around March 2018, until on or about July 29, 2022.

7 5. Plaintiff is informed and believes and thereon alleges that Defendant BERRY
8 GLOBAL FILMS, LLC is authorized to do business within the State of California and is doing
9 business in the State of California and/or that Defendants DOES 1-50 are, and at all times relevant
10 hereto were persons acting on behalf of Defendant BERRY GLOBAL FILMS, LLC in the
11 establishment of, or ratification of, the aforementioned illegal wage and hour practices or policies.
12 Defendant BERRY GLOBAL FILMS, LLC operates in San Bernardino County and employed
13 Plaintiff and aggrieved employees in San Bernardino County, including but not limited to, at 1400
14 Monte Vista Ave., Chino, California 91710.

15 6. Plaintiff is informed and believes and thereon alleges that Defendants DOES 1
16 through 50 are corporations, or are other business entities or organizations of a nature unknown to
17 Plaintiff that employed Plaintiff and aggrieved California non-exempt employees, permitted
18 Plaintiff and aggrieved employees to work, and exercised control over the wages, hours and
19 working conditions of employment of Plaintiff and aggrieved employees.

20 7. Plaintiff is informed and believes and thereon alleges that Defendants DOES 51
21 through 100 are individuals unknown to Plaintiff. Each of the individual defendants is sued
22 individually and in his or her capacity as an agent, shareholder, owner, representative, manager,
23 supervisor, independent contractor and/or employee of each defendant who violated or caused to
24 be violated the minimum wage and overtime provisions of the Labor Code and/or any provision of
25 the Industrial Welfare Commission's wage orders regulating hours and days of work.

26 8. Plaintiff is unaware of the true names of Defendants DOES 1 through 100. Plaintiff
27 sues said defendants by said fictitious names, and will amend this complaint when the true names
28 and capacities are ascertained or when such facts pertaining to liability are ascertained, or as

1 permitted by law or by the Court. Plaintiff is informed and believes that each of the fictitiously
2 named defendants is in some manner responsible for the events and allegations set forth in this
3 complaint.

4 9. Plaintiff makes the allegations in this complaint without any admission that, as to
5 any particular allegation, Plaintiff bears the burden of pleading, proving, or persuading and
6 Plaintiff reserves all of Plaintiff's right to plead in the alternative.

7 **FIRST CAUSE OF ACTION**

8 **CIVIL PENALTIES AND WAGES PURSUANT TO THE PRIVATE ATTORNEYS**

9 **GENERAL ACT OF 2004, LABOR CODE SECTIONS 2698, ET SEQ.**

10 **(Against all Defendants by Plaintiff)**

11 10. Plaintiff incorporates all paragraphs above as though fully set forth herein.

12 11. During the period beginning one (1) year preceding Plaintiff sending the initial
13 PAGA Claim Notice to the LWDA to the present, Defendants violated Labor Code sections 201,
14 202, 203, 204, 226, 226.7, 510, 512, 1194, and Sections 14 and 15 of the applicable Wage Orders.

15 12. Specifically, Defendants have committed the following violations of California
16 Labor Code:

17 13. **Failure to pay wages for overtime hours worked at the overtime rate of pay:**
18 Defendants employed many of their employees, including Plaintiff, as hourly non-exempt
19 employees. In California, an employer is required to pay hourly employees for all "hours worked,"
20 which includes all time that an employee is under control of the employer and all time the
21 employee is suffered and permitted to work. This includes the time an employee spends, either
22 directly or indirectly, performing services that inure to the benefit of the employer.'

23 14. Labor Code sections 510 and 1194 require an employer to compensate employees a
24 higher rate of pay for hours worked in excess of eight (8) hours in a workday, in excess of forty
25 (40) hours in a workweek, and on any seventh consecutive day of work in a workweek:

26 Any work in excess of eight (8) hours in one workday, any work in excess of forty (40)
27 hours in any one (1) workweek, and the first eight (8) hours worked on the seventh day of
28 work in any one (1) workweek, shall be compensated at the rate of no less than one-and-
one-half (1.5) times the regular rate of pay for an employee. Any work in excess of twelve
(12) hours in one (1) day shall be compensated at the rate of no less than twice the regular
rate of pay for an employee. In addition, any work in excess of eight (8) hours on any

seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.

Labor Code section 510.

15. Overtime is based upon an employee's regular rate of pay. "The regular rate at which an employee is employed shall be deemed to include all remuneration for employment paid to, or on behalf, of the employee." See Division of Labor Standards Enforcement – Enforcement Policies and Interpretations Manual, Section 49.1.2.

16. In this case, Plaintiff alleges that when he and other current and former aggrieved California-based hourly non-exempt employees earned overtime wages during the same pay period they earned additional remuneration such as, for example, "Shift Differential Pay" Defendants failed to pay them overtime wages at the proper overtime rate of pay because Defendants failed to include all remuneration when calculating Plaintiff and other current and former aggrieved California-based hourly non-exempt employees regular rate of pay for purposes of paying overtime wages.

17. The foregoing policies, practices, and/or procedures resulted in time during each workday that Plaintiff and other current and former aggrieved California-based hourly non-exempt employees were under the control of Defendants but were not compensated. To the extent that the foregoing uncompensated time occurred when Plaintiff and other current and former aggrieved California-based hourly non-exempt employees worked more than eight (8) hours in a workday, more than forty (40) hours in a workweek, and/or seven (7) days in a workweek, Defendants failed to pay them at their overtime rate of pay for overtime hours worked, in violation of Labor Code sections 510 and 1194 and the applicable Wage Order.

18. **Failure to pay wages to hourly non-exempt employees for workdays that Defendants failed to provide legally required and compliant meal periods:** Plaintiff and other current and former aggrieved California-based hourly non-exempt employees regularly worked shifts of more than five (5) hours in length and shifts of more than ten (10) hours in length.

19. California law requires an employer to authorize or permit an employee an uninterrupted meal period of no less than thirty (30) minutes in which the employee is relieved of all duties and the employer relinquishes control over the employee's activities prior to the

1 employee's sixth hour of work. Labor Code sections 226.7, 512; Wage Order 1 at §11; *Brinker*
2 *Rest. Corp. v. Super Ct. (Hohnbaum)* (2012) 53 Cal.4th 1004. An employer may not employ an
3 employee for a work period of more than ten (10) hours per day without providing the employee
4 with a second such meal period of not less than thirty (30) minutes prior to the start of the eleventh
5 hour of work. *Id.* If the employee is not relieved of all duty during a meal period, the meal period
6 shall be considered an "on duty" meal period and counted as time worked. A paid "on duty" meal
7 period is only permitted when: (1) the nature of the work prevents an employee from being
8 relieved of all duty; and (2) the parties have a written agreement agreeing to on-duty meal periods.

9 20. If an employer fails to provide an employee a meal period in accordance with the
10 law, the employer must pay the employee one (1) hour of pay at the employee's regular rate of pay
11 for each workday that a legally required and compliant meal period was not provided. Labor Code
12 section 226.7; Wage Order 1 at §11.

13 21. In this case, on occasions when Defendants paid Plaintiff and other current and
14 former aggrieved California-based hourly non-exempt employees a "premium" wage for late,
15 missed, short, on-premise, on-duty, and/or interrupted meal periods during the same pay period
16 they earned additional remuneration such as, for example, "Shift Differential Pay" Defendants
17 failed to pay Plaintiff and other current and former aggrieved California-based hourly non-exempt
18 employees meal period premium wages at their regular rate of compensation because Defendants
19 failed to include all remuneration when calculating Plaintiff and other current and former
20 aggrieved California-based hourly non-exempt employees regular rate of compensation for
21 purposes of paying meal period premium wages.

22 22. Defendants' foregoing policies, practices, and/or procedures resulted in Plaintiff
23 and other current and former aggrieved California-based hourly non-exempt employees not
24 receiving wages to compensate them for workdays during which Defendants did not provide them
25 with meal periods in compliance with California law.

26 23. **Failure to pay wages to hourly non-exempt employees for workdays that**
27 **Defendants failed to provide legally required and compliant rest periods:** Plaintiff and other
28 current and former aggrieved California-based hourly non-exempt employees regularly worked

1 shifts of more than three-and-a-half (3.5) hours.

2 24. California law requires every employer to authorize and permit an employee a rest
3 period of ten (10) net minutes for every four (4) hours worked or major fraction thereof. Labor
4 Code section 226.7; Wage Order 1 at §12. Under California law, “[e]mployees are entitled to 10
5 minutes’ rest for shifts from three and one-half to six hours in length, 20 minutes for shifts of more
6 than six hours up to 10 hours, 30 minutes for shifts of more than 10 hours up to 14 hours, and so
7 on.” *Brinker Restaurant Corp. v. Sup. Ct. (Hohnbaum)* (2012) 53 Cal.4th 1004, 1029; Labor Code
8 section 226.7; Wage Order 1 at §12. Rest periods, insofar as practicable, shall be in the middle of
9 each work period. Wage Order 1 at §12. Additionally, the rest period requirement “obligates
10 employers to permit – and authorizes employees to take – off-duty rest periods.” *Augustus v. ABM*
11 *Security Services, Inc.*, (2016) 5 Cal.5th 257, 269. That is, during rest periods employers must
12 relieve employees of all duties and relinquish control over how employees spend their time. *Id.*

13 25. If the employer fails to authorize or permit a required rest period, the employer
14 must pay the employee one (1) hour of pay at the employee’s regular rate of pay for each workday
15 the employer did not authorize or permit a legally required rest period. Labor Code section 226.7;
16 Wage Order 1 at § 12.

17 26. In this case, on occasions when Defendants paid Plaintiff and other current and
18 former aggrieved California-based hourly non-exempt employees a “premium” wage for late,
19 missed, short, on-premise, on-duty, and/or interrupted rest periods during the same pay period they
20 earned additional remuneration such as, for example, “Shift Differential Pay” Defendants failed to
21 pay Plaintiff and other current and former aggrieved California-based hourly non-exempt
22 employees rest period premium wages at their regular rate of compensation because Defendants
23 failed to include all remuneration when calculating Plaintiff and other current and former
24 aggrieved California-based hourly non-exempt employees regular rate of compensation for
25 purposes of paying rest period premium wages.

26 27. Defendants’ foregoing policies, practices, and/or procedures resulted in Plaintiff
27 and other current and former aggrieved California-based hourly non-exempt employees not
28 receiving wages to compensate them for workdays in which Defendants did not provide them with

1 rest periods in compliance with California law.

2 28. **Failure to timely pay earned wages during employment:** In California, wages
3 must be paid at least twice during each calendar month on days designated in advance by the
4 employer as regular paydays, subject to some exceptions. Labor Code section 204(a). Wages
5 earned between the 1st and 15th days, inclusive, of any calendar month must be paid between the
6 16th and the 26th day of that month and wages earned between the 16th and the last day,
7 inclusive, of any calendar month must be paid between the 1st and 10th day of the following
8 month. *Id.* Other payroll periods such as those that are weekly, biweekly, or semimonthly, must be
9 paid within seven (7) calendar days following the close of the payroll period in which wages were
10 earned. Labor Code section 204(d).

11 29. As a derivative of Plaintiff's claims above, Plaintiff alleges that Defendants failed
12 to timely pay Plaintiff's and other current and former aggrieved California-based hourly non-
13 exempt employees' earned wages (including overtime wages, meal period premium wages and/or
14 rest period premium wages), in violation of Labor Code section 204. Defendants' aforementioned
15 policies, practices, and/or procedures resulted in their failure to pay Plaintiff's and other current
16 and former aggrieved California-based hourly non-exempt employees' their earned wages within
17 the applicable time frames outlined in Labor Code section 204.

18 30. **Failure to provide complete and accurate wage statements:** Labor Code section
19 226, subdivision (a). Labor Code section 226(a) provides, *inter alia*, that, upon paying an
20 employee his or her wages, the employer must "furnish each of his or her employees ... an
21 itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the
22 employee, except for any employee whose compensation is solely based on a salary and who is
23 exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of
24 the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable
25 piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided, that all
26 deductions made on written orders of the employee may be aggregated and shown as one item, (5)
27 net wages earned, (6) the inclusive dates of the pay period for which the employee is paid, (7) the
28 name of the employee and his or her social security number, (8) the name and address of the legal

1 entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and
2 the corresponding number of hours worked at each hourly rate by the employee.”

3 31. As a derivative of Plaintiff’s allegations above, Defendants’ failure to pay Plaintiff
4 and other current and former aggrieved California-based hourly non-exempt employees all wages
5 earned (including overtime wages, meal period premium wages, and/or rest period premium
6 wages) rendered Plaintiff’s and other current and former aggrieved California-based hourly non-
7 exempt employees’ wage statements inaccurate, in violation of Labor Code section 226.

8 32. **Failure to pay employees all wages due at time of termination/resignation:** An
9 employer is required to pay all unpaid wages timely after an employee’s employment ends. The
10 wages are due immediately upon termination (Labor Code section 201) or within seventy-two (72)
11 hours of resignation (Labor Code section 202).

12 33. As a derivative of Plaintiff’s allegations above, because Defendants failed to pay
13 Plaintiff and other current and former aggrieved California-based hourly non-exempt employees
14 all their earned wages (including overtime wages, meal period premium wages, and/or rest period
15 premium wages), Defendants failed to pay those employees timely after each employee’s
16 termination and/or resignation, in violation of Labor Code sections 201, 202, and 203.

17 34. Defendants’ violations of Wage Order 1 constituted violations of Labor Code
18 section 1198, which prohibits employment under conditions of labor that violate the Wage Orders.

19 35. Labor Code sections 2699, subdivisions (a) and (g) authorize an aggrieved
20 employee, on behalf of himself or herself and other current or former employees, to bring a civil
21 action to recover civil penalties against all Defendants pursuant to the procedures specified in
22 Labor Code section 2699.3.

23 36. Plaintiff has complied with the procedures for bringing suit specified in Labor
24 Code section 2699.3. On November 18, 2022, Plaintiff filed a PAGA Claim Notice with the
25 LWDA and provided notice to Defendants by certified mail which provided notice of the specific
26 provisions of the Labor Code alleged to have been violated, including the facts and theories to
27 support the violations alleged.

28 37. Pursuant to Labor Code section 2699.3, the LWDA must give written notice by

1 certified mail to the parties that it intends to investigate the alleged violations of the Labor Code
2 within 60 days of the date of the complainant's written notice. The LWDA failed to provide the
3 parties notice within 60 days of the date of Plaintiff's PAGA Claim Notice that the LWDA intends
4 to investigate Plaintiff's claims.

5 38. Pursuant to Labor Code sections 2699(a) and (f), Plaintiff is entitled to recover civil
6 penalties for Defendants' violations of Labor Code sections 201, 202, 203, 204 226, 226.7, 510,
7 512, 1194, beginning one (1) year preceding Plaintiff sending the initial PAGA Claim Notice to
8 the LWDA to the present, in the following amounts:

9 a. For violations of Labor Code sections 201, 202, 203, 204, 226.7, 512; one
10 hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and
11 two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent
12 violation [penalty amounts established by Labor Code section 2699(f)(2)].

13 b. For violations of Labor Code section 226, two hundred fifty dollars (\$250)
14 for each employee for each pay period for the initial violation, and for each subsequent violation,
15 one thousand dollars (\$1000) for each underpaid employee for each pay period [penalty amounts
16 established by Labor Code section 226.3].

17 c. For violations of Labor Code section 510, fifty dollars (\$50) for each
18 employee for each pay period for the initial violation, and for each subsequent violation, one
19 hundred dollars (\$100) for each underpaid employee for each pay period [penalty amounts
20 established by Labor Code section 558] and any unpaid wages.

21 d. For violations of Labor Code section 1194 and 1197, one hundred dollars
22 (\$100) for each underpaid employee for each pay period for the initial violation, and for each
23 subsequent violation, two hundred fifty dollars (\$250) for each underpaid employee for each pay
24 period [penalty amounts established by Labor Code section 1197.1] and any unpaid wages.

25 39. Pursuant to Labor Code section 2699(g), Plaintiff is entitled to an award of
26 reasonable attorneys' fees and costs in connection with his claims for civil penalties.

27 **PRAYER FOR RELIEF**

28 **WHEREFORE, PLAINTIFF, ON BEHALF OF HIMSELF AND ON OTHER**

1 **AGGRIEVED EMPLOYEES, PRAYS AS FOLLOWS:**

2 **ON THE FIRST CAUSE OF ACTION:**

3 1. That Defendants be found to have violated the provisions of the Labor Code and
4 the IWC Wages Orders as to the Plaintiff and aggrieved employees;

5 2. For any and all legally applicable penalties during the relevant statute of limitations
6 subject to any permissible tolling, including but not limited to those recoverable under the
7 California Labor Code, including but not limited to section 2699(f);

8 3. For attorneys' fees and costs of suit, including but not limited to those recoverable
9 under California Labor Code section 2699(g); and

10 4. For such and other further relief, in law and/or equity, as the Court deems just or
11 appropriate

12

13 Dated: January 24, 2023

Respectfully submitted,
LAVI & EBRAHIMIAN, LLP

14

15

By:



16

Joseph Lavi, Esq.

17

Vincent C. Granberry, Esq.

18

Pooja V. Patel, Esq.

19

Courtney Miller, Esq.

20

Attorneys for Plaintiff

21

BRYAN A. HERNADEZ BAHENA,

22

on behalf of himself and current and former
aggrieved employees

23

24

25

26

27

28