

DEC 16 2020

Sherri R. Carter, Executive Officer/Clerk
By: Rita Nazaryan, Deputy

Kevin Mahoney (SBN: 235367)
kmahoney@mahoney-law.net
Joshua D. Klein (SBN: 322099)
jklein@mahoney-law.net
MAHONEY LAW GROUP, APC
249 E. Ocean Blvd., Ste. 814
Long Beach, CA 90802
Telephone: (562) 590-5550
Facsimile: (562) 590-8400

Attorneys for Plaintiff JUAN MARTINEZ GONZALEZ, as an individual and on behalf of all employees similarly situated, and as a representative of the State of California and Labor & Workforce Development Agency,

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES
SPRING STREET COURTHOUSE

JUAN MARTINEZ GONZALEZ, as an individual and on behalf of all aggrieved employees,

Plaintiff,

v.

LOS ALTOS FOOD PRODUCTS, LLC.,
and DOES 1 through 50, inclusive,

Defendants.

Case No.:

20STCV48089

CLASS ACTION

COMPLAINT FOR DAMAGES

1. Violation of Labor Code § 2802 (Failure to Indemnify for Expenditures or Losses in Discharge of Duties); and
2. Violation of Labor Code §§ 2698 *et seq.*, the Private Attorneys General Act ("PAGA").

DEMAND FOR JURY TRIAL

1 Plaintiff JUAN MARTINEZ GONZALEZ ("Plaintiff" or "Mr. Gonzalez"), hereby
2 respectfully complains and alleges as follows:

3 INTRODUCTION

4 1. This is an action brought on behalf of Plaintiff and all similarly-situated employees
5 who were subjected to one or more of the violations alleged herein ("Putative Class") by
6 Defendant LOS ALTOS FOOD PRODUCTS, LLC ("Defendant"). Plaintiff, individually and on
7 behalf of the Putative Class, seeks relief against Defendant for its failure to reimburse Plaintiff
8 and the Putative Class for all necessary business expenditures incurred during their current or
9 former employment with Defendant. For purposes of Plaintiff's Putative Class claim, the term
10 "Relevant Time Period" or "Time Period" is defined as four (4) years prior to the filing of the
11 Complaint, through date of entry of judgment. Plaintiff reserves the right to amend this
12 Complaint to reflect a different "Time Period" as further discovery is conducted.

13 2. Additionally, pursuant to the Private Attorneys' General Act, Labor Code sections
14 2698, *et seq.* ("PAGA"), Plaintiff, as a representative of the State of California and Labor and
15 Workforce Development Agency ("LWDA"), seeks civil penalties for Defendant's failure to
16 reimburse Plaintiff and similarly-aggrieved employees for all necessary business expenditures
17 incurred during their current or former employment with Defendant. For purposes of Plaintiff's
18 PAGA claim, the term "Relevant Time Period" or "Time Period" is defined as one (1) year and
19 sixty-five (65) days prior to the filing of the Complaint, through date of entry of judgment.
20 Plaintiff reserves the right to amend this Complaint to reflect a different "Time Period" as further
21 discovery is conducted.

22 3. At all relevant times herein, Defendant has consistently maintained and enforced
23 the following unlawful policies and practices against Plaintiff, the Putative Class, and all
24 similarly-aggrieved employees: Willfully refusing to pay for expenditures or losses in the
25 discharge of their duties.

26 JURISDICTION AND VENUE

27 4. This Court has subject matter jurisdiction over the causes of action alleged in this
28 complaint because the Court is a court of general subject matter jurisdiction and is not otherwise

1 excluded from exercising subject matter jurisdiction over said causes of action. The penalties
2 recoverable for Plaintiff do not exceed seventy-five thousand dollars (\$75,000.00), and
3 collectively amongst all aggrieved employees do not exceed five million dollars (\$5,000,000.00).

4 5. Defendant is a California limited liability company believed to be doing business
5 in the State of California.

6 6. There is no federal question at issue, as the issue herein are based solely on
7 California statutes and law, including the Labor Code, Industrial Welfare Commission ("IWC")
8 Wage Orders, Code of Civil Procedure, and Rules of Court. By doing business in the state of
9 California, Defendant has purposefully availed itself of the State's jurisdiction. Accordingly, as
10 personal jurisdiction over Defendant would be constitutional, California's long-arm statute
11 provides that California courts may exercise personal jurisdiction over Defendants. (Code Civ.
12 Proc. § 410.10.)

13 7. Venue is proper in the County of Los Angeles, because the acts set forth herein
14 occurred in the County of Los Angeles.

15 **THE PARTIES**

16 **Plaintiff**

17 8. Plaintiff was employed by Defendant from on or about November 2019, until
18 approximately September 28, 2020, as a Lead. Plaintiff worked for Defendant in the City of
19 Industry, California. Plaintiff's duties included loading and unloading orders and revising
20 electronic invoices. Defendant controlled Plaintiff's schedule, trained Plaintiff, and directed his
21 daily job duties.

22 **Defendant**

23 9. Plaintiff is informed and believes, and based thereon alleges, that Defendant is a
24 California limited liability company, doing business in the state of California, and is and/or was
25 the employer of the Plaintiff, the Putative Class, and similarly-aggrieved employees during the
26 Relevant Time Period. Defendant has facilities in California, including in Los Angeles County.
27 Defendant is in the business of manufacturing, shipping, and selling food products (particularly,
28 Mexican-style cheeses) in California and other states.

1 10. Plaintiff is ignorant of the true names, capacities, relationships and extent of
2 participation in the conduct herein alleged of Defendants sued herein as DOES 1 through 50,
3 inclusive, but on information and belief alleges that said Defendants are legally responsible for
4 the violations alleged herein. Plaintiff will amend this complaint to allege the true names and
5 capacities of the DOE Defendant when ascertained.

6 11. Plaintiff is informed and believes, and based thereon alleges, that each Defendant
7 acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint
8 scheme, business plan, or policy in all respects pertinent hereto, and the acts of each Defendant
9 are legally attributable to the other Defendants. Furthermore, Defendants operate as a joint
10 venture and/or single business enterprise, integrated enterprise and/or are agents of one another,
11 are alter egos, joint employers and conspire with one another to increase profits by engaging in
12 the conduct described in this complaint.

13 12. Plaintiff is informed and believes, and based thereon alleges, that each Defendant
14 acted in all respects as the agent, servant, partner, joint venture, alter-ego, employee, proxy,
15 managing agent, and/or principal of the co-Defendants, and in performing the actions mentioned
16 below was acting, at least in part, within the course and scope of that authority as such agent,
17 proxy, servant, partner, joint venture, employee, alter-ego, managing agent, and/or principal with
18 the permission and consent of the co-Defendants. Plaintiff also alleges the acts of each Defendant
19 are legally attributable to the other Defendants.

20 **PAGA ADMINISTRATIVE PREREQUISITE**

21 13. Plaintiff brings this case in part as a representative action seeking penalties for the
22 State of California in a representative capacity, as provided by the PAGA, Labor Code sections
23 2698, *et seq.*, to the extent permitted by law, as an aggrieved employee who was employed by
24 Defendant and did not receive full reimbursement for all necessary business expenses incurred
25 during employment.

26 14. Prior to filing this Complaint, on October 12, 2020, Plaintiff gave written notice
27 by certified mail to the Labor and Workforce Development Agency (hereinafter "LWDA") and
28 to Defendant of the specified provisions alleged to have been violated, including the facts and

1 theories that support the alleged violation as required by Labor Code section 2699.3. (LWDA
2 Case No. LWDA-CM-809325-20.) A true and correct copy of Plaintiff's letter sent to the
3 LWDA, dated October 12, 2020, is attached hereto as "Exhibit A."

4 15. The LWDA has not provided Plaintiff with any notice that it intends to investigate
5 the violations as alleged in Plaintiff's October 12, 2020, notice, and more than 65 calendar days
6 have elapsed since the postmark date on the October 12, 2020, notice.

7 **FACTUAL ALLEGATIONS**

8 16. This lawsuit arises out of an ongoing wrongful scheme by Defendant to deny its
9 employees the benefits due under California's wage and hour laws for work performed in
10 California.

11 17. Defendant willfully failed to reimburse Plaintiff, the Putative Class, and similarly-
12 aggrieved employees for necessary business expenses incurred during their employment with
13 Defendant. Specifically, Defendant required, and on information and belief continues to require,
14 its employees to communicate with one another through their personal phones, including, but
15 not limited to, texting, emails, and telephone calls. Defendant required, and on information and
16 belief continues to require, its management to contact employees to convey schedules, job duties,
17 and other items to employees using their personal cell phones. Defendant did not provide
18 Plaintiff, the Putative Class, or similarly-aggrieved employees with business cell phones, and
19 failed to reimburse its employees for the expense of using their personal cell phones for business
20 purposes in violation of the Labor Code and the IWC Wage Orders.

21 **CLASS ALLEGATIONS**

22 18. Plaintiff brings this action on behalf of himself and all other similarly-situated
23 persons, as a class action pursuant to Code of Civil Procedure section 382. The Putative Class
24 consists of all individuals who worked for Defendant in any California location during the
25 Relevant Time Period. Plaintiff reserves the right under California Rules of Court, rule 3.765, to
26 amend or modify the Putative Class description, or to further divide the Putative Class into
27 subclasses by limitation to particular issues or by other means.

28 19. This action has been brought and may be maintained as a class action pursuant to

1 Code of Civil Procedure section 382 because there is a well-defined community of interest in the
2 litigation, and because the Putative Class is easily ascertained by Defendant's records.

3 **Numerosity**

4 20. The potential members of the class as defined are so numerous that joinder of all
5 class members is impracticable. While the precise number of the Plaintiff Class is unknown,
6 Plaintiff is informed and believes that Defendant has operated one hundred fifty to two hundred
7 (150-200) locations within California at any given time during the Relevant Time Period, and
8 that the Putative Class may contain several thousand employees.

9 **Commonality**

10 21. There are common questions of law and fact arising out of Defendant's conduct
11 as described herein, including, but not limited to whether Defendant failed to reimburse Plaintiff
12 and the Putative Class for all necessary business expenditures, including but not limited to the
13 use of their personal cell phones.

14 **Typicality**

15 22. Plaintiff's claims are typical of the Putative Class's claims, all of whom have
16 incurred and/or will incur damages, as a result of Defendant's common course of conduct and
17 common policies and practices. The claims of Plaintiff are typical because Defendant subjected
18 all of its non-exempt employees to identical violations of the California IWC Wage Orders, Code
19 of Regulations, and Labor Code, among other statutes.

20 **Adequacy of Representation**

21 23. Plaintiff will fairly and adequately represent and protect the interests of the
22 Putative Class. Plaintiff's interests are not in conflict with those of the Putative Class. Plaintiff's
23 attorneys are competent, well-versed, and experienced in litigating employment class actions and
24 other complex litigation matters.

25 **Superiority of Class Action**

26 24. Under the facts and circumstances set forth above, a class action is superior to any
27 other method available for both the fair and efficient adjudication of the rights of each class
28 members inasmuch as joinder of individual relatively small claims of Putative Class members is

1 not practical, and if each employee were required to file an individual lawsuit, Defendant would
2 necessarily gain an unconscionable advantage since they would be able to exploit and overwhelm
3 the limited resources of each individual plaintiff. Requiring each Putative Class member to
4 pursue an individual remedy would also discourage the assertion of lawful claims by employees
5 fearful of retaliation and permanent damage to their careers at present and/or subsequent
6 employment. Further, the substantial risk of inconsistent or varying verdicts or adjudications
7 with respect to the individual Class Members against Defendant herein further supports class
8 certification.

9 **FIRST CAUSE OF ACTION**

10 **Indemnification for Expenditures or Losses in Discharge of Duties**

11 **(Plaintiff against All Defendants)**

12 25. Plaintiff realleges and incorporates by reference all preceding paragraphs as if
13 fully alleged herein.

14 26. Defendant failed to indemnify Plaintiff and the Putative Class for all necessary
15 expenditures or losses incurred in direct consequence of the discharge of their duties.
16 Specifically, Defendant failed to indemnify Plaintiff and the Putative Class for expenditures
17 including, without limitation, a reasonable percentage of their cellular phone bills for purposes
18 of utilizing personal cell phones in direct consequence of the discharge of their duties to
19 Defendants.

20 27. Defendant has not reimbursed Plaintiff and the Putative Class for all expenditures.
21 Plaintiff and the Putative Class are therefore entitled to be paid damages, attorneys' fees, costs,
22 and interest pursuant to Labor Code section 2802, subdivisions (b) and (c), as well as all statutory
23 penalties, against Defendant in accordance with Labor Code section 2802, subdivision (d).

24 **SECOND CAUSE OF ACTION**

25 **VIOLATION OF CALIFORNIA PRIVATE ATTORNEYS GENERAL ACT OF 2004**

26 **(Plaintiff against all Defendants)**

27 28. Plaintiff realleges and incorporates by reference all preceding paragraphs as if
28 fully alleged herein.

1 29. Plaintiff seeks recovery of penalties under the Private Attorneys General Act of
2 2004 (“PAGA”), Labor Code sections 2698, *et seq.*

3 30. Pursuant to Labor Code section 2699, subdivision (l)(1), Plaintiff will, within ten
4 (10) days of the filing of this complaint, provide the LWDA with a file-stamped copy of this
5 complaint.

6 31. Section 2699, subdivision (f), of the Labor Code provides for civil penalties for
7 violations of the Labor Code, for which a specific civil penalty is not provided.

8 32. PAGA permits an “aggrieved employee” to recover penalties on behalf of
9 himself/herself and other similarly aggrieved employees subject to violations of the Labor Code.
10 Plaintiff seeks recovery of civil penalties for section 2802, and the applicable Wage Order.

11 33. Section 558 of the Labor Code provides for civil penalties for violations of the
12 Labor Code by “any employer or other person,” which includes Defendant. Labor Code section
13 558 provides for the award of civil penalties that includes the amount each employee was
14 underpaid, and those underpaid wages are paid to the aggrieved employees.

15 34. Plaintiff is informed and believes Defendant at all relevant times employed one or
16 more employees.

17 35. For those code sections that do not specifically provide for civil penalties, Plaintiff
18 will seek civil penalties of one hundred dollars (\$100.00) for each aggrieved employee for the
19 initial violation, and two hundred dollars (\$200.00) for each aggrieved employee, per pay period,
20 for each subsequent violation. The “initial violation” occurs during the first pay period following
21 notice of such violations served on Defendant through the letter sent to the LWDA.

22 36. Section 2699, subdivision (a), provides that civil penalties may be “recovered
23 through a civil action brought by an aggrieved employee on behalf of himself or herself and other
24 current or former employees.” (*Ibid.*) Section 2699, subdivision (g), provides that an employee
25 who prevails in a civil action under section 2699 shall be entitled to an award of reasonable
26 attorneys’ fees and costs.

27 37. The State of California, Plaintiff, and all similarly-aggrieved employees are,
28 therefore, entitled to civil penalties, attorneys’ fees, and costs, according to proof.

1 **PRAYER FOR RELIEF**

2 **WHEREFORE**, Plaintiff prays for judgment as follows:

- 3 1. That the Court determine that this action may be maintained as a class action under
4 Code of Civil Procedure section 382;
- 5 2. That the Court appoint Plaintiff as Class Representative;
- 6 3. That the Court appoint Mahoney Law Group, APC as class counsel;
- 7 4. For compensatory and statutory damages;
- 8 5. For restitution of all monies due to Plaintiff and the Putative Class from the unlawful
9 business practices of Defendant;
- 10 6. For injunctive relief;
- 11 7. For statutory and civil penalties according to proof;
- 12 8. For reasonable attorneys' fees and costs pursuant to Labor Code section 226,
13 subdivision (e), section 218.5, and section 1194, Code of Civil Procedure section
14 1021.5, and/or other applicable laws and/or statutes;
- 15 9. For penalties provided, per each violation, by PAGA, Labor Code section 2699, et
16 seq. for the violations as stated above, either as provided by each applicable Labor
17 Code section or section 2699, subdivision (f); and
- 18 10. For all such other and further relief as the Court may deem just and proper.
- 19

20 Dated: December 16, 2020

MAHONEY LAW GROUP, APC

21
22 By: _____

23 Kevin Mahoney, Esq.
24 Joshua D. Klein, Esq.
25 Attorneys for Plaintiff JUAN MARTINEZ
26 GONZALEZ
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Exhibit A



Joshua D. Klein
(562) 590-5550 phone
(562) 590-8400 facsimile
jklein@mahoney-law.net

October 12, 2020

VIA CERTIFIED ELECTRONIC FILLING
LABOR AND WORKFORCE DEVELOPMENT AGENCY
Attn: PAGA Administrator
<https://dir.tfaforms.net/128>

VIA CERTIFIED MAIL #7019 0700 0001 7488 8305
Return Receipt Requested
Los Altos Food Products, LLC
Attn: *Corin Andrade*
450 Baldwin Park Boulevard
City of Industry, CA 91746

Re: *Juan Martinez Gonzalez v. Los Altos Food Products, LLC*

**NOTICE OF LABOR CODE VIOLATIONS
PURSUANT TO LABOR CODE
SECTIONS §§ 2698 ET SEQ.**

To: California Labor and Workforce Development Agency and Los Altos Food Products, LLC
From: Juan Martinez Gonzalez, on behalf of himself and all similarly aggrieved employees who were subject to the employer's wage and hour policies as set forth below.

FACTUAL STATEMENT

Please note that the firm, Mahoney Law Group, APC, represents the interests of Juan Martinez Gonzalez ("Employee"), who intends to file a complaint alleging various Labor Code violations and seeking civil penalties under the Private Attorneys General Act of 2004 ("PAGA"), Labor Code sections 2698 et seq., on behalf of himself and all similarly aggrieved employees.

THEORIES OF LABOR CODE VIOLATIONS AND REMEDIES

Los Altos Food Products, LLC ("Employer") manufactures food products and is based in the City of Industry, California. Employee alleges Employer violated various sections of the Labor Code, including, but not limited to, sections 201, 202, 203, 204, 226, 226.3, 226.7, 294, 510, 512, 558, 1174, 1174.5, 1182.12, 1194, 1197, and 2802 by failing to provide Employee and all similarly aggrieved employees all wages for all hours worked, failing to pay minimum wages, failing to pay

overtime, failing to authorize and permit rest periods or premium wages in lieu thereof, failing to provide meal periods or premium wages in lieu thereof, failing to reimburse Employee and all similarly aggrieved employees for work-related expenses, and failing to provide accurate itemized wage statements.

Employer failed to provide Employee and all similarly-aggrieved employees with timely uninterrupted meal and rest periods. Due to Employer's policy and practices, Employee and similarly-aggrieved employees did not receive timely uninterrupted meal and rest periods and were not compensated with premium wages for non-compliant meal and/or rest periods. Further, because Employer did not permit Employee and similarly-aggrieved employees to leave Employer's premises during their rest breaks, Employer did not relinquish control over Employee and similarly-aggrieved employees during rest breaks and thereby denied them duty-free rest breaks. Employer's conduct is in violation of Labor Code sections 226.7 and 512, which is also actionable under PAGA.

Employer failed to pay Employee and all similarly aggrieved employees all legally mandated wages, including minimum wages, overtime wages for all work performed, in violation of California law. Specifically, Employee and similarly-aggrieved employees were required to enter a line where they underwent a security check before clocking in. After clocking out, Employee and similarly-aggrieved employees were subjected to an additional security check, including Employer's searching of Employee and similarly-aggrieved employees' vehicles. Because these checks occurred outside of when Employee and similarly-aggrieved employees were clocked-in, this time was uncompensated by Employer. Furthermore, Employer failed to include non-discretionary bonus in the regular rate of pay for purposes of paying legally mandated overtime when they worked over eight (8) hours in a day or forty (40) hours in a week, which caused Mr. Martinez and aggrieved employees' overtime rate to be incorrect. The incorrect overtime rate favored Employer and resulted in lost wages to Mr. Martinez and aggrieved employees.

Additionally, due to Employer's policy of automatically deducting exactly thirty (30) minutes of time for lunch periods, Employee and similarly-aggrieved employees who were not permitted to take a full thirty (30) minute lunch period were denied wages equal to the amount of missing time between the deducted thirty (30) minutes, and what was actually provided to them.

Furthermore, Employer rounded the hours worked by Employee and similarly-aggrieved employees. Employer's rounding on average favored Employer, and thus resulted in lost wages to Employee and similarly-aggrieved employees.

Employee and all similarly aggrieved employees often worked over eight (8) hours in a day and or forty (40) hours in a week. As such, Employee and all similarly aggrieved employees were further entitled to at least time and a half for the unpaid wages described above. Employer's conduct is in violation of Labor Code sections 294, 510, and 1194, and is actionable under PAGA.

Employer failed to reimburse Employee and all similarly aggrieved employees for their work-related expenses in violation of Labor Code section 2802. Employer forced its employees to

LABOR AND WORKFORCE DEVELOPMENT AGENCY

October 12, 2020

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communicate with one another through personal phones, including, but not limited to, texting, e-mails, and telephone calls. Employer failed to reimburse Employee and similarly-aggrieved employees for their work-related expenses.

As a result of Employer's failure to pay all wages owed as described herein, Employer failed to keep accurate payroll records and failed to provide Employee and all similarly aggrieved employees with complete and accurate wage statements showing the actual hours worked and premium wages earned per pay period. Employer's conduct is in violation of Labor Code sections 226 and 1174 and is actionable under PAGA.

Employee will bring his lawsuit on behalf of himself and all similarly aggrieved employees who were employed by Employer. Please advise if the LWDA has any objection to my client including PAGA claims in her complaint. We look forward to your response. Please feel free to contact our office if you have any questions, comments or concerns.

Sincerely,



Joshua D. Klein, Esq.

MAHONEY LAW GROUP, APC