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FILED
Superior Court of California
County of Los Angeles

10/20/2021

Sherri R. Carter, Executive Officer / Clerk of Court

By: A. Alba Deputy

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **COUNTY OF LOS ANGELES**
12 **STANLEY MOSK COURTHOUSE**

14 VERONICA BUENROSTRO-FLORES,
15 individually, and on behalf of all other
aggrieved employees,

16 Plaintiff,

17 v.

18 LANGER JUICE COMPANY, INC., a
19 California corporation; and DOES 1 through
50, inclusive,

20 Defendants.

CASE NUMBER: 21STCV01133

**FIRST AMENDED COMPLAINT FOR
VIOLATION OF THE CALIFORNIA
LABOR CODE PRIVATE ATTORNEYS
GENERAL ACT OF 2004 ("PAGA")**

[California Labor Code § 2698 *et seq.*]

1 This is a representative action brought by Veronica Buenrostro-Flores, individually and on
2 behalf of all other aggrieved employees ("Plaintiff"), relating to systemic violations of California
3 wage and hour laws by her former employer Langer Juice Company, Inc. ("Langer Juice"),
4 ("Defendant"). Plaintiff makes the following allegations on information and belief, except as to
5 allegations pertaining to Plaintiff individually, which are based on her personal knowledge.

6 INTRODUCTION

7 1. Defendant is a juice manufacturer which operates a facility and maintains its corporate
8 office in the City of Industry, California.

9 2. As a private, for-profit business, Defendant has implemented common policies and
10 practices that have resulted in systemic violations of California's wage and hour laws.

11 3. Defendant has implemented unlawful policies relating to the withholding of wages and
12 unlawful deductions with respect to deducting wages from its non-exempt employees to pay for
13 mandatory uniforms which the non-exempt employees are not reimbursed for by Defendant.
14 Defendant also requires its non-exempt employees, who are informed that the business needs of
15 Defendant take top priority, to work through meal and rest breaks, to take untimely meal periods and
16 to remain on call during such breaks. Defendant also rounded meal periods when meal periods were
17 less than thirty (30) minutes to reflect Plaintiff and non-exempt employees received legally compliant
18 meal periods. To the extent any meal period premium and/or rest period premium payments were
19 paid to Plaintiff and non-exempt employees by Defendant, Defendant failed to pay at the regular rate
20 of pay and blend the hourly rate based upon non-discretionary bonuses, etc. As a result, Plaintiff and
21 other aggrieved employees have been denied the ability to take the meal and rest breaks that they
22 were and are legally entitled to take.

23 4. Moreover, in addition to other violations, Defendant provides non-discretionary
24 bonuses via a written Safety Bonus Plan to their non-exempt employees which is not included in the
25 overtime rates of pay of Plaintiff and the other aggrieved employees. In other words, Defendant has
26 uniformly failed to pay Plaintiff and other aggrieved employees proper overtime wages due the fact
27 that Defendant improperly calculates the regular rate of pay, and willfully turns a blind eye to off-the-
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1 clock work that Plaintiff and other non-exempt employees perform as a direct consequence of
2 Defendant's understaffing and imposition of an unreasonable workload. Plaintiff is also informed
3 and believes during the application statute of limitations period, Defendant also fails to pay sick leave
4 pursuant to Labor Code §246 at the applicable rate of pay for Plaintiff and the other aggrieved
5 employees by not blending the amount earned from nondiscretionary bonus payments payable every
6 thirty (30) days pursuant to Defendant's Safety Bonus Plan. Finally, during the statute of limitations
7 period, Plaintiff is informed and believes that Defendant fails to provide for and pay aggrieved
8 employees supplemental COVID-19 sick leave and fails to itemize the available amounts and
9 amounts taken by the aggrieved employees on their wage statements.

10 **JURISDICTION AND VENUE**

11 5. The Superior Court of the State of California has jurisdiction in this matter because
12 Plaintiff and Defendant are citizens of the State of California. No federal question is at issue because
13 Plaintiff's claims are based solely on California law.

14 6. Venue is proper in this judicial district and the County of Los Angeles, California
15 since Defendant maintains its facility in the County of Los Angeles. Specifically, Defendant's
16 principal office is located at 16195 Stephens Street, City of Industry, California 91745. Moreover,
17 many of Defendant's unlawful actions and omissions, as set alleged herein, occurred in the County of
18 Los Angeles.

19 **THE PARTIES**

20 7. Plaintiff is a citizen of the State of California and was employed by Defendant in Los
21 Angeles County. During the relevant time period, Plaintiff was employed by Defendant as a Quality
22 Control Lab Technician until the termination of her employment in October of 2020.

23 8. Plaintiff is informed and believes, and thereon alleges, that Defendant is, and at all
24 times relevant hereto was, a corporation organized and existing under the laws of the State of
25 California. Defendant is authorized to conduct business and does conduct business in the State of
26 California.

27 9. The true names and capacities of DOES 1 through 50, inclusive, are unknown to
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1 Plaintiff at this time, and Plaintiff therefore sues such Defendants under fictitious names. Plaintiff is
2 informed and believes, and thereon alleges, that each defendant designated as a DOE is in some
3 manner highly responsible for the occurrences alleged herein, and that Plaintiff and other aggrieved
4 employees' injuries and damages, as alleged herein, were proximately caused by the conduct of such
5 DOE Defendants. Plaintiff will seek leave of the Court to amend this Complaint to allege the true
6 names and capacities of such DOE Defendants when ascertained.

7 **PAGA REPRESENTATIVE ACTION ALLEGATIONS**

8 10. Pursuant to the California Private Attorneys General Act of 2004 ("PAGA"),
9 California Labor Code §§ 2698-2699.5, Plaintiff brings this action on behalf of herself and all other
10 aggrieved employees, e.g., current and former non-exempt employees of Defendant who are
11 California citizens and performed work for Defendant in the State of California at any time within the
12 period beginning one (1) year prior to the filing of the Complaint in this action, or as otherwise
13 permitted under PAGA, and ending at the time this action proceeds to final judgment ("statute of
14 limitations period").

15 11. On November 6, 2020, Plaintiff gave written notice by certified mail pursuant to
16 California Labor Code § 2699.3, to the California Labor and Workforce Development Agency
17 ("LWDA") and Defendant, of the specific provisions of the California Labor Code and IWC Wage
18 Order alleged to have been violated, including the facts and theories to support the alleged violations.
19 Plaintiff has not received any response from the LWDA. As Plaintiff has waited more than sixty-five
20 (65) days from the November 6, 2020 postmark date of her written notice before filing this action,
21 Plaintiff has complied with all of the requirements set forth in California Labor Code § 2699.3 to
22 commence a representative action under PAGA.

23 12. On July 19, 2021, Plaintiff amended the November 6, 2020, and provided additional
24 notice to the LWDA and Defendant through its counsel, pursuant to California Labor Code § 2699.3.
25 Plaintiff amended and clarified her specific provisions of the California Labor Code and IWC Wage
26 Order alleged to have been violated, including the facts and theories to support the alleged violations.
27 In addition, Plaintiff, on behalf of the aggrieved employees, provided additional provisions of the
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1 California Labor Code alleged to have been violated. Specifically, Plaintiff provided that Defendant
2 failed to pay sick leave pursuant to Labor Code §246 at the regular rate of pay by failing to blend
3 Defendant's nondiscretionary bonus payments pursuant to Defendant's written Safety Bonus Plan.
4 Next, Plaintiff alleged that Defendant fails to provide for supplemental COVID-19 sick leave to the
5 aggrieved employees and does not list the available hours and hours taken on its wage statements
6 provided to the aggrieved employees. Plaintiff has waited more than sixty-five (65) days from the
7 July 19, 2021 postmark date of her written notice. Plaintiff has complied with all of the requirements
8 set forth in California Labor Code § 2699.3.

9 **FACTUAL ALLEGATIONS**

10 **Failure to Provide Required Meal Periods**

11 **[Cal. Lab. Code §§ 226.7, 512; § 11 of the Applicable IWC Wage Order]**

12 13. During the statute of limitations period, as part of Defendant's illegal policies and
13 practices to minimize labor costs and maximize corporate profits, Defendant has required, permitted
14 or otherwise suffered Plaintiff and aggrieved employees to perform work during their meal periods,
15 to completely skip their meal periods, to take late and short meal periods, and Defendant has
16 otherwise failed to provide the required meal periods to Plaintiff and aggrieved employees as
17 required under California Labor Code §§ 226.7, 512 and § 11 of the applicable IWC Order.

18 14. Defendant has implemented several practices that have caused Plaintiff and aggrieved
19 employees to systematically miss and otherwise take non-compliant meal periods. Defendant
20 systematically understaffs their job sites such that non-exempt employees are given so much work to
21 complete that they regularly miss or otherwise take non-compliant meal periods. As a direct
22 consequence of this understaffing, Plaintiff and aggrieved employees have so much work to complete
23 within their scheduled shifts that they are forced to skip their meal periods altogether, to take them
24 after working longer than five (5) hours, to perform work during their meal periods, or return to work
25 after taking less than a thirty (30) minute meal period.

26 15. There are also frequently occasions when Plaintiff and aggrieved employees need to
27 perform other duties immediately before the time during which they are legally entitled to take a meal
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1 period. Pursuant to Defendant's policies, Plaintiff and aggrieved employees cannot simply drop their
2 urgent job duties to take a meal period. Consequently, Plaintiff and aggrieved employees regularly
3 miss meal periods, take late meal periods, return early from meal periods, and even clock out for
4 meal periods but continue working.

5 16. Plaintiff and aggrieved employees need to first secure permission before taking a meal
6 period. Plaintiff and aggrieved employees often cannot simply stop working and take their meal
7 period, and their inability to secure coverage regularly causes them to regularly miss and otherwise
8 take non-compliant meal periods.

9 17. Despite the foregoing, Defendants have implemented a policy and practice of actively
10 discouraging the issuance of meal period premium payments, and in the process, Defendants have
11 also violated California Labor Code §§ 226.7, § 11 of the applicable IWC Wage Order, and the
12 California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200 *et. seq.*, by failing to
13 compensate Plaintiff and aggrieved employees who were not authorized and permitted to take a
14 complete, timely, uninterrupted meal period, one additional hour of compensation at the proper
15 regular rate of pay for each workday that such a meal period was not authorized or permitted.

16 18. Defendant also implemented an unlawful meal period policy by compensating
17 Plaintiff and aggrieved employees for interrupted meal periods only for their actual work time, as
18 opposed to paying them legally required premiums.

19 **Failure to Provide Required Rest Breaks**

20 **[Cal. Lab. Code §§ 226.7, 512; § 12 of the Applicable IWC Wage Order]**

21 19. During the statute of limitations period, as part of Defendant's illegal policies and
22 practices to minimize labor costs and maximize corporate profits, Defendant has failed to authorize
23 and permit Plaintiff and other aggrieved employees to take rest breaks as required under California
24 Labor Code §§ 226.7 and 512, and § 12 of the applicable IWC Order.

25 20. The same common policies and practices that deprive Plaintiff and other aggrieved
26 employees from taking their meal periods, as alleged herein, similarly deprive them of their ability to
27 take their first and second and third rest breaks. As alleged herein, Defendant understaffs their
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1 facilities, which creates so much work for Plaintiff and other aggrieved employees that they are
2 frequently unable to take rest breaks. Moreover, Plaintiff and other aggrieved employees need to
3 secure permission before taking a rest break, which is often denied by supervisors.

4 21. Defendant also does not provide adequate training regarding Defendant's legal
5 obligations with respect to the provision of rest breaks and failed to implement a schedule regarding
6 rest breaks for non-exempt employees, nor does Defendant post the required wage and hour posters,
7 including but not limited to the appropriate IWC Wage Order poster for non-exempt employees. In
8 short, Defendant essentially has a non-existent rest break policy, as there is no guidance or
9 specification as to when Plaintiff and other aggrieved employees are authorized and permitted to take
10 rest breaks during their shifts. This common policy (or lack thereof) has caused widespread missed
11 rest breaks and systematic violations of California Labor Code §§ 226.7 and 512, and IWC Order No.
12 9-2001, § 12.

13 22. Defendant also violated California Labor Code § 226.7, § 12 of the applicable IWC
14 Order, and the California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200 *et. seq.*, by
15 failing to pay Plaintiff and other aggrieved employees who were not provided with a rest break, in
16 accordance with the applicable wage order, one additional hour of compensation at the proper regular
17 rate of pay for each workday that a rest break was not provided.

18 **Failure to Pay Overtime Wages**

19 **[Cal. Lab. Code §§ 510, 1194, 1198; § 3 of the Applicable IWC Wage Order]**

20 23. Pursuant to California Labor Code §§ 510, 1194, and § 3 of the applicable IWC Order,
21 Defendant is required to compensate Plaintiff and other aggrieved employees for all overtime, which
22 is calculated at one and one-half (1 ½) times the regular rate of pay for all hours worked in excess of
23 eight (8) hours per day and/or forty (40) hours per week, and for the first eight (8) hours on the
24 seventh consecutive workday, with double time for all hours worked in excess of twelve (12) hours in
25 any workday and for all hours worked in excess of eight (8) hours on the seventh consecutive day of
26 work in any workweek.

27 24. During the statute of limitations period, Defendant has failed to compensate Plaintiff
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1 and other aggrieved employees for all overtime hours worked as required under the foregoing
2 provisions of the California Labor Code and IWC Wage Order by, among other methods: failing to
3 pay overtime at one and one-half (1 ½) or double the regular rate of pay as provided by California
4 Labor Code §§ 510, 1194 and § 3 of the applicable IWC Order, requiring, permitting or suffering
5 Plaintiff and other aggrieved employees to work off-the-clock, and to work through meal and rest
6 breaks, but not compensating them for this time, improperly calculating the regular rate of pay based
7 on shift differential, non-discretionary performance based bonuses regarding Defendant's Safety
8 Bonus Plan, other remuneration, and other methods to be discovered.

9 25. Plaintiff is further informed and believes, in a short-sighted attempt to maximize
10 profits, Defendant has understaffed their facilities. Not only has this practice resulted in widespread
11 missed meal and rest breaks, but it has also caused Plaintiff and other aggrieved employees to
12 perform work while off-the-clock. Defendant has actual or constructive knowledge of this off-the-
13 clock work and subtly condone it. Plaintiff and other aggrieved employees routinely arrive to work
14 early to check so that they are prepared and ready to begin performing their duties promptly at the
15 start of their shifts, as they must be pursuant to Defendant's requirements. Defendant knows that
16 Plaintiff and other aggrieved employees perform this work off-the-clock.

17 26. Plaintiff and other aggrieved employees must get to work by no later than the start of
18 their shifts – and usually earlier. Thus, they are not afforded the benefit of clocking in for work a few
19 minutes late. Likewise, Plaintiff and other aggrieved employees are in a rush to complete their
20 mandatory job duties, so they are rarely afforded the benefit of clocking out early at the end of their
21 shifts. This results in the widespread underpayment of time worked.

22 27. Moreover, Defendant also paid Plaintiff and the other aggrieved employees non-
23 discretionary bonuses that were based upon, among other things, certain safety standards and
24 attendance. The non-discretionary bonus payments provided to Plaintiff and the other aggrieved
25 employees were not calculated in their overtime rates of pay depriving Plaintiff and the other
26 aggrieved employees of overtime wages.

27 28. Defendant has knowingly and willfully refused to perform their obligations to
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1 compensate Plaintiff and other aggrieved employees for all wages earned and all hours worked in
2 violation of California Labor Code §§ 510, 1194 and 1198 and § 3 of the applicable IWC Order.

3 **Failure to Pay Minimum Wages**

4 **[Cal. Lab. Code §§ 1194, 1197; § 4 of the IWC Wage Orders]**

5 29. Pursuant to Cal. Lab. Code §§ 1194, 1197, and § 4 of the applicable IWC Wage Order,
6 payment to an employee of less than the applicable minimum wage for all hours worked in a payroll
7 period is unlawful.

8 30. During the statute of limitations period, the hourly rates for Plaintiff and other
9 aggrieved employees were precisely at California minimum wage. Based on this common practice,
10 Defendant failed to pay Plaintiff and other aggrieved employees minimum wages for all hours
11 worked by requiring, permitting or suffering Plaintiff and other aggrieved employees to work off the
12 clock, such as requiring them to work through meal and rest breaks but not compensating them for
13 this time, and failing to include this time in all hours worked, and other methods to be discovered.

14 31. Defendant's conduct described herein violates Cal. Lab. Code §§ 1194, 1197, and § 4
15 of the applicable IWC Wage Order. As a proximate result of the aforementioned violations, Plaintiff
16 and other aggrieved employees have been damaged in an amount according to proof at trial.
17 Therefore, pursuant to California Labor Code §§ 200, 203, 226, 1194, 1197.1, and any other
18 applicable law, Plaintiff and other aggrieved employees are entitled to recover the unpaid balance of
19 wages owed to them by Defendant, plus interest, penalties, attorneys' fees, expenses, and costs of
20 suit.

21 **Failure to Pay All Wages Due to Discharged and Quitting Employees**

22 **[Cal. Lab. Code §§ 201 - 203]**

23 32. Pursuant to California Labor Code § 201, 202 and 203, Defendant is required to pay
24 all earned and unpaid wages to an employee who is discharged. California Labor Code § 201
25 mandates that if an employer discharges an employee, the employee's wages accrued and unpaid at
26 the time of discharge are due and payable immediately.

27 33. Furthermore, pursuant to California Labor Code § 202, Defendant is required to pay
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1 all accrued wages due to an employee no later than 72 hours after the employee quits his or her
2 employment, unless the employee provided 72 hours previous notice of his or her intention to quit, in
3 which case the employee is entitled to her or wages at the time of quitting.

4 34. California Labor Code § 203 provides that if an employer willfully fails to pay, in
5 accordance with Labor Code §§ 201 and 202, any wages of an employee who is discharged or who
6 quits, the employer is liable for waiting time penalties in the form of continued compensation to the
7 employee at the same rate for up to 30 workdays.

8 35. Moreover, Defendant failed to include non-discretionary bonus payments to Plaintiff
9 and the other aggrieved employees in their regular and overtime time rates of pay which has resulted
10 in the failure of Defendant to pay all wages due, including but not limited to overtime compensation,
11 to Plaintiff and the other aggrieved employees who have been discharged or quit. Moreover, Plaintiff
12 is informed and believes Defendant unlawfully required Plaintiff and the other aggrieved employees
13 to make monetary deposits in order to receive mandatory uniforms to perform their job duties which
14 could not be used by Plaintiff and the other aggrieved employees for employment elsewhere.
15 Notwithstanding the use of Defendant's mandatory uniform policy, Plaintiff and the other aggrieved
16 employees who were discharged and/or resigned, were not reimbursed by Defendant the wages that
17 were used as a deposit for the mandatory uniforms.

18 36. During the statute of limitations period, Defendant has willfully failed to pay accrued
19 wages and other compensation to Plaintiff and other aggrieved employees in accordance with
20 California Labor Code §§ 201 and 202. Defendant does not have a sufficient policy to provide
21 Plaintiff and other aggrieved employees with their final paychecks within the timeframes required
22 under California law. In addition, because Defendant has failed and continue to fail to properly
23 compensate Plaintiff and other aggrieved employees for all hours worked when due, overtime wages,
24 and compensation for non-compliant meal and rest breaks, wages relating to Defendant's inaccurate
25 rate of pay by not include Plaintiff and the other aggrieved employees non-discretionary bonuses,
26 unlawfully requiring Plaintiff and the other aggrieved employees to advance deposits for mandatory
27 uniforms from their wages, failing to reimburse Plaintiff and the other aggrieved employees wages
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1 wrongfully withheld as advanced deposits for mandatory uniforms, failing to provide for the
2 regularly rate of pay regarding sick leave and Defendant has also willfully failed and continue to fail
3 to pay accrued wages and other compensation to Plaintiff and other aggrieved employees in
4 accordance with California Labor Code §§ 201 and 202.

5 **Failure to Furnish Accurate Itemized Wage Statements**

6 **[Cal. Lab. Code § 226; § 7 of the Applicable IWC Wage Order]**

7 37. During the statute of limitations period, Defendant has routinely failed to provide
8 Plaintiff and other aggrieved employees with timely and accurate itemized wage statements.
9 Defendant's pay stubs violate Labor Code § 226 on their face by, failing to list the applicable rates of
10 pay for regular and overtime hours worked by Plaintiff and aggrieved employees, and/or listing the
11 inaccurate rate of pay for regular and overtime wages based upon the payment on non-discretionary
12 performance bonuses. Further, Defendant was and is not providing Plaintiff and other aggrieved
13 employees with proper meal periods and rest breaks but intentionally fails to include in their wage
14 statements one (1) additional hour of compensation at their regular rates of pay for each non-
15 compliant meal period or rest break and failed to have the full legal address for the worksite
16 employer.

17 38. Plaintiff is further informed and believes, Defendant withheld wages from Plaintiff
18 and the other aggrieved employees for mandatory uniforms necessary for them to perform their job
19 duties and such unlawful withholdings were not reflected on Plaintiff and the other aggrieved
20 employees wage statements. In addition, Plaintiff is further informed and believes during a portion of
21 the statute of limitations period, some if not all of Defendant's wage statements only listed "Langer
22 Juice Company, Inc.", and failed to list the full legal name and address of the employer when
23 aggrieved employees were provided with their last paycheck at the time of separation. Defendant also
24 incorrectly calculated Plaintiff and the other aggrieved employees overtime compensation by failing
25 to blend their monthly nondiscretionary bonus payments received from Defendant's non-
26 discretionary Safety Bonus Plan with their overtime rate of pay which makes all of the wage
27 statements during the applicable statute of limitations period inaccurate. Defendant also failed to
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1 calculate the sick provided to Plaintiff and the other aggrieved employees at their “regular rate of
2 pay” or pursuant to the methods provided in Labor Code §246 (l) thereby providing inaccurate wage
3 statements to Plaintiff and the other aggrieved employees and not blending nondiscretionary bonus
4 payments from its written Safety Bonus Plan. Finally, Defendant failed to provide for the available
5 hours and hours taken by the aggrieved employees of supplemental COVID-19 sick leave on its wage
6 statements thereby making the wage statements inaccurate and missing necessary information.

7 39. In order to conceal their wage theft, Defendant knowingly and intentionally failed to
8 provide Plaintiff and other aggrieved employees with timely and accurate itemized wage statements
9 in accordance with Labor Code § 226(a) and § 7 of the applicable IWC Order.

10 40. Plaintiff and other aggrieved employees suffered injury as a result of Defendant’s
11 failure to provide timely and accurate itemized wage statements based upon that deficiencies
12 provided herein, and others yet to be discovered, and prevented them from discovering the scope and
13 extent of Defendant’s violations of California wage and hour laws, prevented them from being able to
14 determine the gross wages earned, the total hours worked, all deductions made, the net wages earned,
15 all applicable hourly rates in effect during each pay period and the corresponding number of hours
16 worked at each hourly rate, or even the address of the legal entity that employed them.

17 **Failure to Maintain Required Records**

18 **[Cal. Lab. Code §§ 226(a), 1174(d); § 7 of the Applicable IWC Wage Order]**

19 41. During the statute of limitations period, as part of Defendant’s illegal payroll policies
20 and practices to deprive Plaintiff and other aggrieved employees of all wages earned and due,
21 Defendant knowingly and intentionally failed to maintain records as required under California Labor
22 Code §§ 226(a) and 1174(d) and § 7 of the applicable IWC Order, including but not limited to the
23 following records: total daily hours worked by each employee; applicable rates of pay; all deductions;
24 meal periods; time records showing when each employee begins and ends each work period; and
25 accurate itemized statements. Defendant had knowledge that it was not providing its non-exempt
26 employees with proper meal and rest periods, but knowingly failed to include in the wage statements
27 one (1) extra hour of compensation for each missed meal and rest period. Defendant also illegally
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1 and inaccurately recorded the time in which Plaintiff and other aggrieved employees worked.
2 Defendant failed to maintain accurate records during the applicable statute of limitations period since
3 Defendant incorrectly calculated Plaintiff and the other aggrieved employees overtime compensation
4 by failing to blend their monthly nondiscretionary bonus payments received from Defendant's non-
5 discretionary Safety Bonus Plan with their overtime rate of pay which makes all of the wage
6 statements during the applicable statute of limitations period inaccurate. Defendant has also failed to
7 maintain accurate, itemized wage statements, failed to maintain accurate records of the wages
8 wrongfully withheld for mandatory uniforms, as alleged above.

9 **Failure to Indemnify Employees for Necessary Expenditures**

10 **[Cal. Lab. Code § 2802]**

11 42. Cal. Lab. Code § 2802(a) requires an employer to indemnify an employee for all
12 necessary expenditures or losses incurred by the employee in direct consequence of the discharge of
13 her his or her duties, or of his or her obedience to the directions of the employer.

14 43. During the statute of limitations period, and in violation of Cal. Lab. Code § 2802,
15 Plaintiff is further informed and believes Defendant failed to indemnify Plaintiff and other aggrieved
16 employees for all business expenses and/or losses incurred in direct consequence of the discharge of
17 their duties, including but not limited to, expenses relating to the performance of their duties,
18 including mandatory uniforms, safety gloves and goggles which were necessary for Plaintiff and the
19 other aggrieved employees to perform their jobs.

20 **Failure To Provide Properly Calculate Mandatory California Sick Leave**

21 44. Pursuant to California Labor Code §246, any employee who works in the State of
22 California and who works more than "30 or more days within a year ... is entitled to be paid sick
23 days ..." Labor Code §246(1) provides an employer shall calculate sick pay under the following
24 methods: (1) Paid sick time for nonexempt employees shall be calculated in the same manner as the
25 regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the
26 employee actually works overtime in that workweek." Alternatively, pursuant to Labor Code
27 §246(1)(2), states, "Paid sick time for nonexempt employees shall be calculated by dividing the
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1 employee's total wages, including overtime premium pay, by the employee's total hours worked in
2 the full pay periods of the prior 90 days of employment."

3 45. During the applicable statute of limitations period, Defendant fails to comply with
4 Labor Code Section §246 by not providing Plaintiff and the other aggrieved employees with sick pay
5 pursuant to the two (2) methods as set forth in Labor Code §246(l)(1) or (2). Additionally, during the
6 applicable statute of limitations period, Defendant violates California Labor Code § 246(l)(1) by
7 failing to pay sick leave to the aggrieved employees at their regular rate of pay taking into
8 consideration non-discretionary bonus payments relating to Bonus Safety Program and other methods
9 to be discovered. Alternatively, Defendant violates Labor Code § 246(l)(2) by failing to divide the
10 aggrieved employees total wages by their total hours worked in the "full pay periods of the prior 90
11 days of employment".

12 **Failure to Pay COVID-19 Supplemental Sick Leave**

13 **[Cal. Lab. Code §§ 248.1, 248.2]**

14 46. Plaintiff is informed and believes, during the statute of limitations period, Defendant
15 failed to provide 80 hours of COVID-19 Supplemental Paid Sick leave and compensate Aggrieved
16 Employees at their regular rate of pay for supplemental sick leave, i.e., their highest regular rate of
17 pay, taking into consideration non-discretionary bonuses, etc., in violation of California Labor Code §
18 248.1(b)(3)(A). Defendant also failed to provide COVID-19 Supplemental Sick Leave to Aggrieved
19 Employees in violation of California Labor Code § 248.1(b)(2)(D). Defendant also failed to
20 accurately reflect any offset and/or the current amount of COVID-19 Supplemental Sick Leave
21 available to Aggrieved Employees on their wage statements, in violation of California Labor Code §§
22 248.1(b)(2)(D), 248.2 and for the reasons provided herein.

23 **FIRST CAUSE OF ACTION**

24 **VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT**

25 **[Cal. Lab. Code § 2698 *et seq.*]**

26 (On Behalf of Plaintiff against Defendant)

27 47. Plaintiff incorporates herein by specific reference, as though fully set forth, the
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1 allegations in paragraphs 1 through 46.

2 48. Plaintiff is an “aggrieved employee” within the meaning of California Labor Code §
3 2699(c), and a proper representative to bring a civil action on behalf of herself and other current and
4 former non-exempt employees of Defendant pursuant to the procedures specified in Labor Code §
5 2699.3, because Plaintiff was employed by Defendant and one or more of the alleged California
6 Labor Code violations was committed against Plaintiff during the statute of limitations period. A
7 plaintiff has standing to represent all aggrieved employees for all of her asserted violations of
8 the California Labor Code under PAGA. See *Huff v. Securitas Security Services USA, Inc.*
9 (2018) 23 Cal.App.5th 745, 757 (“For PAGA standing a plaintiff need only have been
10 employed by the violator and affected by ‘one or more’ of the alleged violations.” See,
11 California Labor Code §2699, subds. (a), (c)).

12 49. Plaintiff seeks to recover civil penalties through a representative action permitted by
13 PAGA and the California Supreme Court in *Arias v. Superior Court* (2009) 46 Cal.4th 969. Thus,
14 class certification is not required.

15 50. Pursuant to California Labor Code §§ 2698-2699.5, Plaintiff seeks to recover civil
16 penalties from Defendant in a representative action for the violations set forth above, including but
17 not limited to violations of California Labor Code §§ 201, 202, 203, 226(a), 226.7, 510, 512, 1174(d),
18 1194, 1197, 1198 and 2802.

19 51. Pursuant to California Labor Code § 2699(a), Plaintiff seeks to recover civil penalties
20 for Defendant’s violations of California Labor Code provisions for which a civil penalty is
21 specifically provided, including but not limited to, the following:

22 a. Pursuant to California Labor Code § 210, for violations of California Labor
23 Code § 204, Defendant is subject to a civil penalty in the amount of one
24 hundred dollars (\$100) for the initial violation for each failure to pay each
25 employee, and two hundred dollars (\$200) per employee for violations in
26 subsequent pay periods.

27 b. Pursuant to California Labor Code § 226.3, for violations of California Labor
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Code § 226(a), Defendant is subject to a civil penalty in the amount of two hundred and fifty dollars (\$250) per aggrieved employee for the initial pay period where a violation occurs and one thousand dollars (\$1,000) per aggrieved employee for violations in subsequent pay periods.

c. Pursuant to California Labor Code § 1174.5, for violations of California Labor Code § 1174(d), Defendant is subject to a civil penalty of five hundred dollars (\$500).

d. Pursuant to California Labor Code § 1197.1, an employer who pays or causes to be paid to any employee a wage less than the minimum fixed by an order of the commission, shall be subject to a civil penalty as follows: for any initial violation that is intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee is underpaid; and for each subsequent violation of the same offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay period for which the employee is underpaid regardless of whether the initial violation was intentionally committed.

52. California Labor Code § 2699(f) provides that for all California Labor Code violations for which a civil penalty is not specifically provided, the following civil penalties are established: one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation.

53. Plaintiff seeks to recover such civil penalties under California Labor Code § 2699(f) for Defendant's violations of California Labor Code provisions for which a civil penalty is not specifically provided, including but not limited to, California Labor Code §§ 201, 202, 203, 226.7, 246, 248.1, 248.2, 1194, 1197, 1198 and 2802.

54. Plaintiff additionally seeks reasonable attorneys' fees and costs pursuant to California Labor Code § 2699(g)(1) and California Code of Civil Procedure § 1021.5.

1 **PRAYER FOR RELIEF**

2 **WHEREFORE**, Plaintiffs, on behalf of other aggrieved employees, respectfully pray for
3 relief against Defendants and DOES 1 through 50, inclusive, and each of them, as follows:

- 4 1. For all civil penalties pursuant to California Labor Code §§2699 (a) and 2699(f);
5 2. For reasonable attorneys' fees and costs pursuant to California Labor Code § 2699,
6 California Civil Code § 1021.5, and/or any other applicable provisions providing for attorneys' fees
7 and costs; and
8 3. For such further relief that the Court may deem just and proper.

9 DATED: October 12, 2021

10 THE LAW OFFICE OF SCOTT E. WHEELER

11 
12 By: SCOTT E. WHEELER

13 *Attorney for Plaintiff and Aggrieved Employees*
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PROOF OF SERVICE
STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am an employee in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 250 West First Street, Suite 216, Claremont, California 91711.

On October 20, 2021, I served the foregoing documents, described as

**FIRST AMENDED COMPLAINT FOR VIOLATION OF THE CALIFORNIA LABOR
CODE PRIVATE ATTORNEYS GENERAL ACT OF 2004 ("PAGA")**

on all interested parties in this action by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

Lewis Brisbois Bisgaard & Smith, LLP Attorneys for Langer Juice Company, Inc.
Melissa T. Daugherty, Esq.
Andrew J. Sokolowski, Esq.
Kerri R. Lutfey, Esq.
633 West 5th Street, Suite 4000
Los Angeles, California 90071

_____ (BY PERSONAL SERVICE) I placed such documents in a sealed envelope and caused such envelope to be personally delivered to the party at the above listed address.

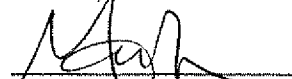
 X (BY U.S. MAIL) I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Claremont, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation postage meter date is more than one day after date of deposit for mailing in affidavit.

_____ (BY FACSIMILE) I sent such document via facsimile mail to the number(s) noted above.

_____ (BY ELECTRONIC MAIL) I sent such document via electronic mail to the electronic mail address(es) noted above.

 X (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on October 20, 2021 at Claremont, California.



MINERVA LOPEZ