

ORIGINAL

CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): David Garrett (160274) Harris & Ruble 655 N. Central Avenue, #1700 Glendale, CA 91203 TELEPHONE NO.: (323) 962-3777 FAX NO.: (323) 962-3004		To keep other people from seeing what you entered on this form, please sign the end of the form when finished. MAR 30 2022
ATTORNEY FOR (Name): Plaintiff Carlos Martinez		
SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Bernardino STREET ADDRESS: 247 West Third Street MAILING ADDRESS: 247 West Third Street CITY AND ZIP CODE: San Bernardino, CA 92415 BRANCH NAME: San Bernardino District - Civil Division		
CASE NAME: Carlos Martinez v. DPI Specialty Foods, Inc.		BY: <u>Gloria M. Portillo</u> GLORIA M. PORTILLO, DEPUTY
CIVIL CASE COVER SHEET ☒ Unlimited (Amount demanded exceeds \$25,000) ☐ Limited (Amount demanded is \$25,000 or less)	Complex Case Designation ☐ Counter ☐ Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)	CASE NUMBER: CIV SB 220649? DEPT:

Items 1-6 below must be completed (see instructions on page 2).

BY FAX

1. Check one box below for the case type that best describes this case:
- | | | |
|---|--|--|
| Auto Tort
☐ Auto (22)
☐ Uninsured motorist (46)
Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort
☐ Asbestos (04)
☐ Product liability (24)
☐ Medical malpractice (45)
☐ Other PI/PD/WD (23)
Non-PI/PD/WD (Other) Tort
☐ Business tort/unfair business practice (07)
☐ Civil rights (08)
☐ Defamation (13)
☐ Fraud (16)
☐ Intellectual property (19)
☐ Professional negligence (25)
☐ Other non-PI/PD/WD tort (35)
Employment
☐ Wrongful termination (36)
☒ Other employment (15) | Contract
☐ Breach of contract/warranty (06)
☐ Rule 3.740 collections (09)
☐ Other collections (09)
☐ Insurance coverage (18)
☐ Other contract (37)
Real Property
☐ Eminent domain/Inverse condemnation (14)
☐ Wrongful eviction (33)
☐ Other real property (26)
Unlawful Detainer
☐ Commercial (31)
☐ Residential (32)
☐ Drugs (38)
Judicial Review
☐ Asset forfeiture (05)
☐ Petition re: arbitration award (11)
☐ Writ of mandate (02)
☐ Other judicial review (39) | Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403)
☐ Antitrust/Trade regulation (03)
☐ Construction defect (10)
☐ Mass tort (40)
☐ Securities litigation (28)
☐ Environmental/Toxic tort (30)
☐ Insurance coverage claims arising from the above listed provisionally complex case types (41)
Enforcement of Judgment
☐ Enforcement of judgment (20)
Miscellaneous Civil Complaint
☐ RICO (27)
☐ Other complaint (not specified above) (42)
Miscellaneous Civil Petition
☐ Partnership and corporate governance (21)
☐ Other petition (not specified above) (43) |
|---|--|--|
2. This case ☐ is ☒ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|--|--|
| a. ☐ Large number of separately represented parties | d. ☐ Large number of witnesses |
| b. ☐ Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. ☐ Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. ☐ Substantial amount of documentary evidence | f. ☐ Substantial postjudgment judicial supervision |
3. Remedies sought (check all that apply): a. ☒ monetary b. ☐ nonmonetary; declaratory or injunctive relief c. ☐ punitive
4. Number of causes of action (specify): 1
5. This case ☐ is ☒ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)
- Date: March 26, 2022

(TYPE OR PRINT NAME)

David C. Garrett

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

ORIGINAL

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN BERNARDINO

Carlos Martinez, as a proxy of the State of California

Case No.: **CIV SB 2206493**

VS.

CERTIFICATE OF ASSIGNMENT

DPI Specialty Foods, Inc.

BY FAX

A civil action or proceeding presented for filing must be accompanied by this Certificate. If the ground is the residence of a party, name and residence shall be stated.

The undersigned declares that the above-entitled matter is filed for proceedings in the San Bernardino District of the Superior Court under Rule 131 and General Order of this court for the checked reason:

☒ General

☐ Collection

Nature of Action

Ground

- | | |
|---|---|
| ☐ 1. Adoption | Petitioner resides within the district |
| ☐ 2. Conservator | Petitioner or conservatee resides within the district. |
| ☐ 3. Contract | Performance in the district is expressly provided for. |
| ☐ 4. Equity | The cause of action arose within the district. |
| ☐ 5. Eminent Domain | The property is located within the district. |
| ☐ 6. Family Law | Plaintiff, defendant, petitioner or respondent resides within the district. |
| ☐ 7. Guardianship | Petitioner or ward resides within the district or has property within the district. |
| ☐ 8. Harassment | Plaintiff, defendant, petitioner or respondent resides within the district. |
| ☐ 9. Mandate | The defendant functions wholly within the district. |
| ☐ 10. Name Change | The petitioner resides within the district. |
| ☐ 11. Personal Injury | The injury occurred within the district. |
| ☐ 12. Personal Property | The property is located within the district. |
| ☐ 13. Probate | Decedent resided or resides within or had property within the district. |
| ☐ 14. Prohibition | The defendant functions wholly within the district. |
| ☐ 15. Review | The defendant functions wholly within the district. |
| ☐ 16. Title to Real Property | The property is located within the district. |
| ☐ 17. Transferred Action | The lower court is located within the district. |
| ☐ 18. Unlawful Detainer | The property is located within the district. |
| ☐ 19. Domestic Violence | The petitioner, defendant, plaintiff or respondent resides within the district. |
| ☒ 20. Other | Employment - Other |
| ☒ 21. THIS FILING WOULD | NORMALLY FALL WITHIN JURISDICTION OF SUPERIOR COURT |

The address of the accident, performance, party, detention, place of business, or other factor which qualifies this case for filing in the above-designed district is:

DPI Specialty Foods, Inc.

930 S. Rockefeller Ave.

NAME - INDICATE TITLE OR OTHER QUALIFYING FACTOR

ADDRESS

Ontario

CA

91761

CITY

STATE

ZIP CODE

I declare, under penalty of perjury, that the foregoing is true and correct and that this declaration was executed on March 30, 2022 at San Diego, CA, California.

/s/ David C. Garrett

Signature of Attorney/Party

ORIGINAL

SUM-100

SUMMONS (CITACION JUDICIAL) BY FAX

NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):
DPI SPECIALTY FOODS, INC.,

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

APR 16 2022

BY Gloria M. Portillo
GLORIA M. PORTILLO, DEPUTY

YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):

CARLOS JULIAN MARTINEZ, as a proxy of the State of California on behalf of aggrieved employees

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es): San Bernardino Superior Court
247 West Third Street
San Bernardino, CA 92415-0210

CASE NUMBER:
(Número del Caso)
CIV SB 2206492

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Harris & Ruble, 655 N. Central Avenue, 17th Floor, Glendale, CA 91203

DATE: March 25, 2022
(Fecha)

APR 16 2022

Clerk, by
(Secretario)

Deputy
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

Gloria Portillo

[SEAL]



NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):

3. ☒ on behalf of (specify):

- under: ☒ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
☐ other (specify):

4. ☐ by personal delivery on (date):



SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN BERNARDINO
San Bernardino District
247 West 3rd St
San Bernardino CA 92415
www.sb-court.org
909-708-8678

Martinez -v- DPI Specialty Foods, Inc

NOTICE OF TRIAL SETTING CONFERENCE and NOTICE OF CASE ASSIGNMENT

Case Number

CIVSB2206492

HARRIS & RUBLE
655 NORTH CENTRAL AVENUE
17TH FLOOR
GLENDALE CA 91203

This case has been assigned to: Winston Keh in Department S33 - SBJC for all purposes.

Notice is hereby given that the above-entitled case has been set for Trial Setting Conference on:

Hearing Date: 10/17/2022 at 8:30 AM in Department S33 - SBJC

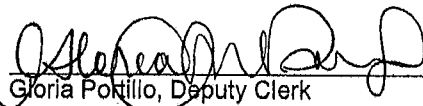
The Trial Setting Conference will be held in chambers without the appearance of the parties – except for good cause shown. (Local Rule 411.1).

Parties shall file and serve no later than 10 days prior to the trial setting conference the mandatory Initial Trial Setting Conference Statement form (local form #13-09001-360) included with this notice. Prior to the date of the initial trial setting conference, the court may entertain a written stipulation by all appearing parties to continue the initial trial setting conference if filed at least 30 days prior to the conference. In the event an At Issue Memorandum shall be filed and served no later than 15 days prior to the trial setting conference.

Date: 5/27/2022

Nancy CS Eberhardt, Court Executive Officer

By


Gloria Portillo, Deputy Clerk

CERTIFICATE OF SERVICE

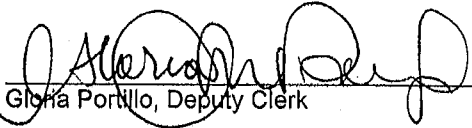
I am a Deputy Clerk of the Superior Court for the County of San Bernardino at the above-listed address. I am not a party to this action and on the date and place shown below, I served a copy of the above-listed notice by:

- ☒ Enclosed in a sealed envelope mailed to the interested party addressed above for collection and mailing this date, following standard Court practices.
- ☐ Enclosed in a sealed envelope, first class postage prepaid in the U.S. mail at the location shown above, mailed to the interested party and addressed as shown above or as shown on the attached listing.
- ☐ A copy of this notice was given to the filing party at the counter.
- ☐ A copy of this notice was placed in the bin located at this office and identified as the location for the above law firm's collection of file-stamped documents.

Date of Mailing: 5/27/2022

I declare under penalty of perjury that the forgoing is true and correct. Executed on 5/27/2022 at San Bernardino, CA.

By


Gloria Portillo, Deputy Clerk

ORIGINAL

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

MAR 30 2022

BY Gloria M. Portillo
GLORIA M. PORTILLO, DEPUTY

1 Alan Harris (SBN 146079)
HarrisA@harrisandruble.com
2 David Garrett (SBN 160274)
DGarrett@harrisandruble.com
3 **HARRIS AND RUBLE**
655 North Central Ave 17th Floor
4 Glendale CA 91203
Telephone: (323) 962-3777
5 Facsimile: (323) 962-3004

6 Attorneys for Plaintiff
Carlos Julian Martinez

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF SAN BERNARDINO**

10
11 CARLOS JULIAN MARTINEZ, as a proxy
of the State of California on behalf of
12 aggrieved employees,

13 Plaintiff,

14 v.

15 DPI SPECIALTY FOODS, INC.,

16 Defendants.

Case No.

CIV SB 2206492

PAGA LAW ENFORCEMENT ACTION

1. Civil Penalties, Cal. Lab. Code § 2698
Private Attorneys General Act

BY FAX

1 Alan Harris (SBN 146079)
HarrisA@harrisandruble.com
2 David Garrett (SBN 160274)
DGarrett@harrisandruble.com
3 **HARRIS AND RUBLE**
655 North Central Ave 17th Floor
4 Glendale CA 91203
Telephone: (323) 962-3777
5 Facsimile: (323) 962-3004

6 Attorneys for Plaintiff
Carlos Julian Martinez
7

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF SAN BERNARDINO**

10
11 CARLOS JULIAN MARTINEZ, as a proxy
12 of the State of California on behalf of
aggrieved employees,

13 Plaintiff,

14 v.

15 DPI SPECIALTY FOODS, INC.,

16 Defendants.
17
18
19
20
21
22
23
24
25
26
27
28

Case No.

PAGA LAW ENFORCEMENT ACTION

1. Civil Penalties, Cal. Lab. Code § 2698
Private Attorneys General Act

1 Plaintiff Carlos Julian Martinez (“Martinez” or “Plaintiff”), under the California Labor Code
2 Private Attorneys General Act of 2004 (“PAGA”), California Labor Code § 2698 *et seq.*, on behalf of
3 himself in his representative capacity, by and through his undersigned attorneys, alleges as follows:
4

5 **JURISDICTION AND VENUE**

6 1. This is a PAGA law enforcement representative action seeking civil penalties and
7 attorneys’ fees and costs. Plaintiff brings this action pursuant to PAGA, on a representative basis on
8 behalf of all natural persons who, at any time during the one year preceding the filing of the PAGA
9 Notice on May 24, 2021 through the present (the “PAGA Period”), were or are employed by Defendant
10 DPI SPECIALTY FOODS, INC. (“DPI” or “Defendant”) as a non-exempt hourly employee in
11 California (the “Aggrieved Employees.”).

12 2. This Court has jurisdiction over Plaintiff’s individual and PAGA claims for civil penalties,
13 Cal. Labor Code § 2698 *et seq.*

14 3. Venue as to Defendant is proper in this judicial district, pursuant to California Code of
15 Civil Procedure sections 395(a) and 395.5. Defendant maintains an office, transacts business, has an
16 agent or are otherwise found in the County of San Bernardino and is within the jurisdiction of this court
17 for the purpose of service of process. The alleged unlawful acts alleged herein had a direct effect on and
18 were committed within the State of California. Further, at all times relevant herein Plaintiff was
19 employed by Defendant within the County of San Bernardino.

20 4. This Court has jurisdiction over Defendant because, upon information and belief,
21 Defendant is either a resident of California, has minimum contacts in California, or otherwise
22 intentionally avails itself of the protections of California so as to render California’s exercise of
23 jurisdiction over Defendant consistent with traditional notions of fair play and substantial justice.

24 **PARTIES**

25 5. Plaintiff Martinez is an individual over the age of eighteen (18). At all relevant times herein,
26 Plaintiff Martinez was a California resident, residing in the County of San Bernardino.

27 6. Plaintiff was employed by Defendant as hourly non-exempt employee during the PAGA
28 Period.

7. Plaintiff is informed and believes, and based thereon alleges, that during the PAGA Period and continuing to the present, Defendant did (and do) business by operating a specialty food company, with locations within the County of San Bernardino, and employed Plaintiff and other, similarly-situated hourly non-exempt employees within the County of San Bernardino and, therefore, were (and are) doing business in the County of San Bernardino and the State of California.

8. DPI is a leader in the procurement and wholesale distribution of specialty food products acquired locally, nationally and worldwide. DPI's website indicates that "DPI's mission is to provide all customers with an extensive variety of specialty foods from around the world, including gourmet, natural, organic, gluten free, local and ethnic foods." <https://www.dpispecialtyfoods.com/products> (accessed March 20, 2022).

9. DPI is incorporated in Delaware and is authorized to do and does business in the County of San Bernardino, State of California.

10. The true names and/or capacities, whether individual, corporate, associate or otherwise, of defendants Does 1 to 100 inclusive, are unknown to Plaintiff at this time, who therefore sues said defendants by such fictitious names. When the true names and capacities of said defendants have been ascertained, Plaintiff will amend this complaint accordingly. Plaintiffs are informed and believes and thereupon alleges that each defendant designated herein as a Doe is responsible, negligently, intentionally, contractually, or in some other actionable manner, for the events and happenings hereinafter referred to, and caused injuries and damages proximately thereby to Plaintiff as is hereinafter alleged, either through said Defendant's own wrongful conduct or through the conduct of their agents, servants, employees, representatives, officers or attorneys, or in some other manner.

11. At all times mentioned herein, Defendants, and each of them, were members of and engaged in a joint venture, partnership, and common enterprise, and acting within the course and scope of and in pursuance of said joint venture, partnership, and common enterprise. Further, Plaintiff alleges that all Defendants were joint employers for all purposes of Plaintiff and the Aggrieved Employees

GENERAL ALLEGATIONS

12. Plaintiff Martinez worked for DPI during the PAGA Period as non-exempt hourly employee. Plaintiff and other Aggrieved Employees were allegedly denied meal and rest breaks, proper

1 wage statements and the timely payment of wages. For example, Plaintiff and other Aggrieved
2 Employees were allegedly denied \$0.50 per hour premium freezer pay ("Freezer Pay") during the PAGA
3 Period.

4 13. Defendant would allegedly only compensate Plaintiffs and the Aggrieved Employees for
5 their scheduled hours worked, despite the fact that they were frequently allegedly required to work off-
6 the-clock. When Plaintiff and the Aggrieved Employees worked they would not be paid overtime for
7 work performed over eight hours in a day, and they would not receive proper double-time compensation.
8 Plaintiff and the Aggrieved Employees were not timely paid the minimum wages and/or overtime to
9 which they were entitled in violation of California Labor Code §§510 and 1194. See Biggs v. Wilson, 1
10 F3d 1537 (9th Cir. 1993), in which the court found both late payment and nonpayment of minimum
11 wages to violate a statute requiring the payment of minimum hourly wages.

12 14. Plaintiff and the Aggrieved Employees were allegedly frequently required to work for
13 over ten hours a day but were not provided a second meal period. Likewise, on those days that Plaintiff
14 and/or the Aggrieved Employees and Aggrieved Employees worked over ten hours, they were not
15 provided a third rest period.

16 15. Plaintiffs and the Aggrieved Employees were allegedly required to purchase protective
17 clothing for which they were not reimbursed. Defendant did not reimburse Plaintiff or other Aggrieve
18 Employees for the purchase of their protective clothing, a required reimbursement under the California
19 State Occupational Safety and Health Act ("Cal OSHA"). Cal. Lab. Code § 6300 *et seq.*

20 16. At all times relevant hereto California Labor Code sections 1194 and 1198 and Industrial
21 Welfare Commission ("IWC") Wage Order 16 required the payment of overtime for hours worked over
22 eight in a workday.

23 17. At all relevant times mentioned herein, California Labor Code section 1194 provided, in
24 relevant part:

25 Notwithstanding any agreement to work for a lesser wage, any employee receiving less
26 than the legal minimum wage or the legal overtime compensation applicable to the
27 employee is entitled to recover in a civil action the unpaid balance of the full amount of
28 this minimum wage or overtime compensation, including interest thereon, reasonable
attorney's fees, and costs of suit.

Cal. Lab. Code § 1194(a).

1 18. At all relevant times mentioned herein, section 1198 of the California Labor Code
2 provided:

3 The maximum hours of work and the standard conditions of labor fixed by the
4 commission shall be the maximum hours of work and the standard conditions of labor for
5 employees. The employment of any employee for longer hours than those fixed by the
order or under conditions of labor prohibited by the order is unlawful.

6 Cal. Lab. Code § 1198. Section 1198 refers to “conditions of labor prohibited by the order [of the IWC]”
7 and therefore incorporates by reference IWC Wage Order Number 16. To date, Plaintiff has not been
8 paid for all of the hours he worked for Defendant. By failing to pay Plaintiff and the Aggrieved
9 Employees for all of their hours of work, DPI violated section 1198 by employing Plaintiff and the
10 Aggrieved Employees “under conditions of labor prohibited by the order.” Cal. Lab. Code § 1198.

11 19. IWC Wage Order 16 provides, in relevant part:

12 (A) Every employer shall pay to each employee wages of not less than seven
13 dollars and fifty cents (\$7.50) per hour for all hours worked, effective January 1, 2007,
and not less than eight dollars (\$8.00) per hour for all hours worked, effective January 1,
2008.

14 (B) Every employer shall pay to each employee, on the established payday for the
15 period involved, not less than the applicable minimum wage for all hours worked in the
payroll period, whether the remuneration is measured by time, piece, commissioner, or
otherwise.

16 8 Cal. Code Regs. § 11160(4).

17 20. At all relevant times mentioned herein, section 204 of the California Labor Code provided,
18 in relevant part:

19 All wages, other than those mentioned in Section 201, 202, 204.1, or 204.2, earned by any
20 person in any employment are due and payable twice during each calendar month, on days
designated in advance by the employer as the regular paydays. Labor performed between
21 the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th
and the 26th day of the month during which the labor was performed, and labor performed
22 between the 16th and the last day, inclusive, of any calendar month, shall be paid for
between the 1st and 10th day of the following month.

23 Cal. Lab. Code § 204.

24 21. Plaintiff and the Aggrieved Employees were not provided proper meal breaks as required
25 by law. Plaintiff and the Aggrieved Employees were also not provided proper rest breaks.

26 22. At all times relevant hereto, section 226.7 of the California Labor Code provided:

27 (a) No employer shall require any employee to work during any meal or rest period
mandated by an applicable order of the Industrial Welfare Commission.

28 (b) If an employer fails to provide an employee a meal period or rest period in accordance

1 with an applicable order of the Industrial Welfare Commission, the employer shall pay the
2 employee one additional hour of pay at the employee's regular rate of compensation for
each work day that the meal or rest period is not provided.

3 Cal. Lab. Code § 226.7.

4 23. IWC Wage Order 16 provides, in relevant part:

5 (A) Every employer shall authorize and permit all employees to take rest periods, which
6 insofar as practicable shall be in the middle of each work period. Nothing in this provision
7 shall prevent an employer from staggering rest periods to avoid interruption in the flow of
8 work and to maintain continuous operations, or from scheduling rest periods to coincide
9 with breaks in the flow of work that occur in the course of the workday. The authorized
rest period time shall be based on the total hours worked daily at the rate of ten (10)
minutes net rest time for every four (4) hours worked, or major fraction thereof. Rest
periods shall take place at employer designated areas, which may include or be limited to
the employees' immediate work area.

10 . . .

11 (D) If an employer fails to provide an employee a rest period in accordance with the
12 applicable provisions of this order, the employer shall pay the employee one (1) hour of
pay at the employee's regular rate of compensation for each workday that the rest period is
not provided.

13 8 Cal. Code Regs. § 11160(11).

14 24. IWC Wage Order 16 provides, in relevant part, with respect to meal periods:

15 (A) No employer shall employ any person for a work period of more than five (5)
16 hours without a meal period of not less than 30 minutes

17 (B) An employer may not employ an employee for a work period of more than ten (10)
18 hours per day without providing the employee with a second meal period of not less than
30 minutes

19

20 (D) Unless the employee is relieved of all duty during a 30 minute meal period, the
21 meal period shall be considered "on duty" meal period and counted as time worked

22

23 (F) If an employer fails to provide an employee a meal period in accordance with the
24 applicable provisions of this order, the employer shall pay the employee one (1) hour of
25 pay at the employee's regular rate of compensation for each workday that the meal period
26 is not provided

27 8 Cal. Code Regs. § 11160(10). Here, Plaintiff and the Aggrieved Employees were not provided a second
28 meal break when working more than ten hours in a workday.

25 25. DPI allegedly violated sections 226.7 and 512 of the California Labor Code and IWC
26 Wage Order 16 by failing to provide proper rest breaks and meal periods.

27 26. To date, Defendant has allegedly failed to compensate Plaintiff and the Aggrieved
28 Employees for all of their earned wages in accordance with the California Labor Code, and IWC Wage

1 Order 16.

2 27. At all relevant times mentioned herein, section 226 of the California Labor Code
3 provided:

4 (a) Every employer shall, semimonthly or at the time of each payment of wages, furnish
5 each of his or her employees, either as a detachable part of the check, draft, or voucher
6 paying the employee's wages, or separately when wages are paid by personal check or
7 cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total
8 hours worked by the employee, except for any employee whose compensation is solely
9 based on a salary and who is exempt from payment of overtime under subdivision (a) of
10 Section 515 or any applicable order of the Industrial Welfare Commission, (3) the number
11 of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-
12 rate basis, (4) all deductions, provided, that all deductions made on written orders of the
13 employee may be aggregated and shown as one item, (5) net wages earned, (6) the
14 inclusive dates of the period for which the employee is paid, (7) the name of the employee
15 and his or her social security number, except that by January 1, 2008, only the last four
16 digits of his or her social security number or an employee identification number other than
17 a social security number may be shown on the itemized statement, (8) the name and
18 address of the legal entity that is the employer, and (9) all applicable hourly rates in effect
19 during the pay period and the corresponding number of hours worked at each hourly rate
20 by the employee. The deductions made from payments of wages shall be recorded in ink
21 or other indelible form, properly dated, showing the month, day, and year, and a copy of
22 the statement or a record of the deductions shall be kept on file by the employer for at
23 least three years at the place of employment or at a central location within the State of
24 California.

25

26 (e) An employee suffering injury as a result of a knowing and intentional failure by an
27 employer to comply with subdivision (a) is entitled to recover the greater of all actual
28 damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and
one hundred dollars (\$100) per employee for each violation in a subsequent pay period,
not exceeding an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an
award of costs and reasonable attorney's fees.

19 Cal. Lab. Code § 226.

20 28. Throughout the period of Plaintiff's employment with DPI, DPI allegedly failed to provide
21 him with all of the data required by section 226(a) of the California Labor Code. For example, DPI knew
22 that Plaintiffs and the Aggrieved Employees were not provided with a third rest break when working over
23 ten hours per day or a second meal break, yet DPI failed and refused to reflect the additional wages that
24 accrued to Plaintiffs and the Aggrieved Employees on account of these facts on the wage statements.
25 Further, the wage statement is confusing in that it does not list the name of the legal entity which is the
26 employer on the wage statements, making it impossible to determine from the wage statement alone the
27 identity of the legal entity that is the employer. In addition, the wage statements utterly fail to identify
28 the "rate of pay and the total hours worked for each temporary services assignment," all as required by

1 section 226(a)(9) of the California Labor Code.

2 29. At all relevant times mentioned herein, section 1174 of the California Labor Code
3 provided:

4 Keep, at a central location in the state or at the plants or establishments at which
5 employees are employed, payroll records showing the hours worked daily by and the
6 wages paid to, and the number of piece-rate units earned by and any applicable piece rate
7 paid to, employees employed at the respective plants or establishments. These records
shall be kept in accordance with rules established for this purpose by the commission, but
in any case shall be kept on file for not less than two years.

8 Cal. Lab. Code § 1174(d).

9 30. IWC Wage Order 16 provides, in relevant part:

10 (A) Every employer who has control over wages, hours, or working conditions
shall keep accurate information with respect to each employee, including the following:

11 (1) The employee's full name, home address, occupation, and social security
12 number. The employee's date of birth, if under 18 years of age, and designation as a
13 minor. Time records showing when the employee begins and ends each work period.
Meal periods, split shift intervals, and total daily hours worked shall also be recorded.
14 Meal periods during which operations cease and authorized rest periods need not be
recorded.

15 (2) Total wages paid each payroll period, including value of board, lodging, or
other compensation actually furnished to the employee.

16 (3) Total hours worked during the payroll period and applicable rates of pay. This
17 information shall be made readily available to the employee upon reasonable request.
When a piece rate or incentive plan is in operation, piece rates or an explanation of the
18 incentive plan formula shall be provided to employees. An accurate production record
shall be maintained by the employer.

19 (B) Every employer who has control over wages, hours, or working conditions
20 shall semimonthly or at the time of each payment of wages furnish each employee an
itemized statement in writing showing: (1) all deductions; (2) the inclusive dates of the
21 period for which the employee is paid; (3) the name of the employee or the employee's
social security number; and (4) the name of the employer, provided all deductions made
22 on written orders of the employee may be aggregated and shown as one item. (See Labor
Code Section 226.) This information shall be furnished either separately or as a detachable
23 part of the check, draft, or voucher paying the employee's wages.

24 8 Cal. Code Regs. §11160(6)(A)–(B).

25 31. DPI failed to maintain payroll records required by the California Labor Code and IWC
26 Wage Order 16. For example, DPI failed to record the “[t]ime records . . . when the employee begins and
27 ends each work period.” 8 Cal. Code Regs. §11160(6)(A)(1).

28 32. Section 2699 of the California Labor Code, the Labor Code Private Attorneys General Act

of 2004, provides in subpart (a) and subparts (f) through (g):

(a) Notwithstanding any other provision of law, any provision of this code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency or any of its departments, divisions, boards, agencies or employees, for a violation of this code, may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees.

....

(f) For all provisions of this code except those for which a civil penalty is specifically provided, there is established a civil penalty for a violation of these provisions, as follows . . . (2) If, at the time of the alleged violation, the person employs one or more employees, the civil penalty is 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.

....

(g) Except as provided in paragraph (2), an aggrieved employee may recover the civil penalty described in subdivision (f) in a civil action pursuant to the procedures specified in Section 2699.3 filed on behalf of himself or herself and other current or former employees against whom one or more of the alleged violations was committed. Any employee who prevails in any action shall be entitled to an award of reasonable attorney's fees and costs. Nothing in this part shall operate to limit an employee's right to pursue or recover other remedies available under state or federal law, either separately or concurrently with an action taken under this part.

Cal. Lab. Code § 2699.

33. At all times relevant herein, section 226.3 of the California Labor Code provided, in relevant part:

Any employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$ 250) per employee per violation in an initial citation and one thousand dollars (\$ 1,000) per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the records required in subdivision (a) of Section 226. The civil penalties provided for in this section are in addition to any other penalty provided by law.

Cal. Lab. Code § 226.3.

34. At all times relevant herein, section 210 of the California Labor Code provided, in relevant part:

(a) In addition to, and entirely independent and apart from, any other penalty provided in this article, every person who fails to pay the wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 205, 205.5, and 1197.5, shall be subject to a civil penalty as follows:

(1) For any initial violation, one hundred dollars (\$100) for each failure to pay each employee.

(2) For each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.

1 Cal. Lab. Code § 210.

2 35. At all times relevant herein, section 558 of the California Labor Code provided, in
3 relevant part:

4 (a) Any employer or other person acting on behalf of an employer who violates, or causes
5 to be violated, a section of this chapter or any provision regulating hours and days of work
6 in any order of the Industrial Welfare Commission shall be subject to a civil penalty as
follows:

7 (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay
8 period for which the employee was underpaid in addition to an amount sufficient to
recover underpaid wages.

9 (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.

10 (3) Wages recovered pursuant to this section shall be paid to the affected employee.

11

12 (c) The civil penalties provided for in this section are in addition to any other civil or
criminal penalty provided by law.

13 Cal. Lab. Code § 558.

14 36. At all times relevant herein, section 1197.1 of the California Labor Code provided, in
15 relevant part:

16 (a) Any employer or other person acting either individually or as an officer, agent, or
17 employee of another person, 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:

18 (1) For any initial violation that is intentionally committed, one hundred dollars (\$100)
19 for each underpaid employee for each pay period for which the employee is underpaid.

20 (2) For each subsequent violation for the same specific 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 is intentionally committed.

21 Cal. Lab. Code § 1197.1.

22 37. Wage Order 16 provides for civil penalties with respect to violations of the Wage
23 Order:

24 (A) Penalties for Violations of the Provisions of this Order. Any employer or any other
25 person acting on behalf of the employer who violates, or causes to be violated, the
provisions of this order, shall be subject to civil and criminal penalties as provided by law.
26 In addition, violation of any provision of this order shall be subject to a civil penalty as
follows: (1) Initial Violation - \$50.00 for each underpaid employee for each pay period
27 during which the employee was underpaid in addition to the amount which is sufficient to
recover unpaid wages. (2) Subsequent Violations - \$100.00 for each underpaid employee
28 for each pay period during which the employee was underpaid in addition to an amount
which is sufficient to recover unpaid wages. (3) The affected employee shall receive

1 payment of all wages recovered. The labor commissioner may also issue citations pursuant
2 to California Labor Code Section 1197.1 for non-payment of wages for overtime work in
violation of this order.

3 8 Cal. Code Regs. §11160(18)(A).

4 **PAGA REPRESENTATIVE ACTION ALLEGATIONS**

5 38. Plaintiff Martinez was employed by Defendant as a non-exempt employee in San
6 Bernardino County, California at Defendant's facility in Ontario during the PAGA Period.

7 39. Due to Defendant's alleged failure to pay Plaintiff for hours worked over 8.0 hours in a
8 workday, each Plaintiff is owed overtime wages for each shift worked in excess of 8.0 hours per workday.

9 40. Defendant allegedly failed to pay Plaintiff overtime compensation for all hours worked in
10 excess of 8.0 hours per workday, in violation of Wage Order 4, § 3(B)(2).

11 41. Defendant also allegedly failed to pay for all hours worked by Plaintiff Martinez and other
12 non-exempt employees due to Defendant's policy/practice of regularly, systematically, and impermissibly
13 rounding the hours worked by non-exempt employees in Defendant's favor, resulting, over a period of
14 time, in the failure to properly compensate and other non-exempt employees for all hours worked. As a
15 result of Defendant's timekeeping policy and/or practice that failed to compensate for all hours worked,
16 Plaintiff Martinez and other non-exempt employees were deprived of all required minimum wages and
additional overtime wages earned.

17 42. Additionally, Defendant failed to authorize and permit Plaintiff Martinez to take
18 uninterrupted, paid rest periods for shifts in excess of 3.5 hours, in violation of California law. Despite
19 Defendant's failure to authorize and permit all required rest periods due to their uniform and unlawful
20 policies/practices, Defendant failed to provide Plaintiff Martinez with an hour of pay at his regular rate for
21 each rest period violation as required by Labor Code § 226.7.

22 43. As a result of Defendant's failure to maintain a valid Alternative Workweek Schedule
23 ("AWS") and pay all overtime and minimum wages as well as Defendant's failure to authorize and permit
24 required rest periods or pay rest period premium wages in lieu thereof, Defendant maintained inaccurate
25 payroll records and issued inaccurate wage statements to Defendant. Further, Defendant's wage statements
26 are facially deficient due to misstating the name of the legal entity which is the employer and the double
27 time rate of pay in violation of Labor Code § 226(a)(9) and failing to include all-inclusive dates of the pay
28 period, in violation of Labor Code § 226(a)(6).

1 44. Based on the foregoing, Plaintiff Martinez seek to represent himself and all aggrieved
2 employees, as defined by Labor Code § 2699(c).

3 45. On May 24, 2021, Plaintiff Martinez gave written notice by certified mail of Defendant's
4 violations of various provisions of the California Labor Code as alleged in this Complaint to the Labor
5 and Workforce Development Agency ("LWDA") and Defendant. See Letter from Alan Harris to the
6 LWDA and Defendant (May 24, 2021) attached hereto as Exhibit 1. Included with the written notice to
7 the LWDA and Defendant CLP was a copy of Plaintiff's draft Complaint, which outlined in detail the
8 facts and circumstances concerning the violations alleged by Plaintiff. Plaintiff brings this action
9 pursuant to PAGA, on an individual and a representative basis on behalf of all natural persons who, at
10 any time during the one year preceding the filing of the PAGA notice through the present, were or are
11 employed by Defendant DPI SPECIALTY FOODS, INC. ("DPI") as a non-exempt hourly employee in
12 California. The number of aggrieved employees is believed to be in excess of one hundred, which is
13 readily ascertainable through examination of Defendant's records.

14 46. More than sixty-five days have passed from the date of Plaintiff's notice to the LWDA
15 and Plaintiff has not been notified by the LWDA that it intends to investigate Plaintiff's allegations.
16 Therefore, Plaintiff, pursuant to section 2699.3(a)(2)(A), may then "commence a civil action pursuant to
17 Section 2699." Cal. Lab. Code § 2699.3(a)(2)(A).

18 47. Plaintiffs are informed and believes and thereon alleges that Defendant has routinely
19 failed to provide Plaintiff and other Aggrieved Employees with proper itemized wage statements,
20 minimum and overtime wages, proper meal and rest periods, reimbursement for protective footwear, and
21 all wages due at termination of their employment. Defendant also unlawfully failed to keep accurate
22 payroll records showing Aggrieved Employees' hours worked and wages paid.

23 48. Plaintiff alleges that Defendant violated PAGA in the following ways: (1) failing to pay
24 Aggrieved Employees accrued wages for all hours worked in violation of Wage Order No. 16 and Labor
25 Code §§ 201.3, 204, 510, 1182.12, 1194, and 1197; (2) willfully failing to provide Aggrieved Employees
26 with itemized wage statements in violation of Labor Code §§ 226(a), 1174, and 1174.5; (3) failing to
27 provide the Aggrieved Employees with meal and rest periods in violation of Labor Code § 226.7, and
28 IWC Wage Order 16; (4) failing to reimburse Plaintiff for the purchase of protective footwear in violation

1 of section 2802 of the California Labor Code; (5) willfully failing to pay compensation owed in a prompt
2 and timely manner to Plaintiff and other Aggrieved Employees whose employment with Defendant
3 terminated in violation of Wage Order No. 16 and Labor Code §§201, 201.3, 202, 203 and 558; (6)
4 failing to timely and properly respond to Labor Code section 226(b) requests for production of
5 documents: and (7) failing to keep required payroll records in violation of Labor Code §§ 1174 and
6 1174.5. “PAGA actions can serve to *indirectly* enforce certain wage order provisions by enforcing
7 *statutes* that require compliance with wage orders (e.g., § 1198, which prohibits longer work hours than
8 those fixed by wage order or employment under conditions prohibited by a wage order).” Thurman v.
9 Bayshore Transit Mgmt., Inc., 203 Cal. App. 4th 1112, 1132 (2012).

10 49. There is a well-defined community of interest in the questions of law and fact common to
11 the Aggrieved Employees. The key questions are the same for each Aggrieved Employee. These
12 common questions include, but are not limited to, the following:

13 a. Whether DPI failed to provide accurate itemized wage statements to each and every
14 Aggrieved Employee.

15 b. Whether DPI failed to provide Aggrieved Employees with proper meal periods.

16 c. Whether DPI failed to provide Aggrieved Employees with proper rest periods.

17 d. Whether DPI failed to provide a one-hour wage premium in those instances when
18 Aggrieved Employees were not provided with a meal period.

19 e. Whether DPI failed to provide a one-hour wage premium in those instances when
20 Aggrieved Employees were not provided with a rest period.

21 f. Whether DPI failed to maintain accurate time-keeping and payroll records for the
22 Aggrieved Employees.

23 g. Whether DPI’s failure to provide accurate itemized wage statements to each and every
24 Aggrieved Employee violates sections 226.

25 h. Whether DPI failed to pay all wages in a timely fashion upon each and every Aggrieved
26 Employees’ discharge from, or resignation of, employment in violation of sections 201 and/or 202 of the
27 California Labor Code.
28

1 i. Whether DPI failed to pay overtime in a timely fashion under California Labor Code
2 section 201.3 and 204 to the Aggrieved Employees.

3 j. Whether DPI failed to pay minimum wage under California Labor Code section 1194(a) to
4 the Aggrieved Employees.

5 k. Whether DPI failed to pay proper minimum wages and/or overtime wages under
6 California Labor Code sections 510 and 1194 to the Aggrieved Employees.

7 50. There is a well-defined community of interest in the questions of law and fact common to
8 the Aggrieved Employees.

9 51. Plaintiff's claims are typical of the claims of the Aggrieved Employees, which claims all
10 arise from the same general operative facts, namely, DPI did not compensate its employees as required by
11 the California Labor Code and applicable Wage Order. Plaintiff has no conflict of interest with the other
12 Aggrieved Employees and is able to represent the Aggrieved Employees' interests fairly and adequately.

13 **FIRST CAUSE OF ACTION**

14 (Cal. Lab. Code § 2698 *et seq.*, Civil Penalties Under the Private Attorneys General Act)

15 (Against Defendant DPI)

16 52. Plaintiff realleges and incorporates herein by reference the allegations contained in this
17 Complaint as though fully set forth herein.

18 53. Defendant have committed several Labor Code violations against Plaintiff and other
19 similarly aggrieved employees. Plaintiff, an "aggrieved employee" within the meaning of Labor Code §
20 2698 *et seq.*, acting on behalf of herself and other similarly aggrieved employees, brings this
21 representative action against Defendant to recover the civil penalties due to Plaintiff, other similarly
22 aggrieved employees, and the State of California according to proof pursuant to Labor Code § 2699 (a)
23 and (f) including, but not limited to (1) \$50.00 for each initial violation and \$100 for each subsequent
24 violation of Labor Code § 558 per employee per pay period, plus an amount sufficient to recover the
25 unpaid wages and; (2) \$100.00 for each initial violation and \$200 for each subsequent violation per
26 employee per pay period for the following Labor Code violations.

27 54. Plaintiffs are "aggrieved employees" under PAGA, as they was employed by Defendant
28

1 during the applicable statutory period and suffered one or more of the Labor Code Violations set forth
2 herein. Accordingly, they seek to recover on behalf of themselves and all other current and former
3 Aggrieved Employees of Defendant, the civil penalties for which provision is made by PAGA, as well as
4 reasonable attorney's fees and costs.

5 55. Pursuant to section 2699.3(a)(1) of the Labor Code, by certified mail posted on May 24,
6 2021, Plaintiff Martinez gave written notice to the California Labor and Workforce Development Agency
7 ("LWDA") of the specific provisions of the Labor Code alleged to have been violated by Defendant,
8 including the theories set forth in this Complaint. Also on that day, Plaintiff gave written notice by
9 certified mail to Defendant of the specific provisions of the Labor Code alleged to have been violated by
10 Defendant.

11 56. Therefore, after the appropriate passage of time, Plaintiff "may as a matter of right amend
12 [the] existing [C]omplaint to add a cause of action arising under [the Labor Code Private Attorney
13 General Act ("LCPAGA")]." Cal. Lab. Code § 2699.3(a)(2)(C). PAGA establishes civil penalties for
14 violations of the Labor Code, including the violations alleged in this Complaint.

15 57. On or about July 11, 2021, Plaintiff Martinez notified Defendant DPI Industrial
16 Outsourcing, LLC, and the California Labor and Workforce Development Agency ("LWDA") via e-mail
17 of Defendant's violations of the California Labor Code and Plaintiff's intent to bring a claim for civil
18 penalties under California Labor Code § 2698 et seq. with respect to violations of the California Labor
19 Code identified in Paragraph 20 (e)-(f). Now that sixty-five days have passed from Plaintiff notifying
20 Defendant of these violations, Plaintiff has exhausted his administrative requirements for bringing a
21 claim under the Private Attorneys General Act with respect to these violations.

22 58. Plaintiffs seek to recover the PAGA civil penalties through a representative action
23 permitted by PAGA and the California Supreme Court in Arias v. Superior Court, 46 Cal.4th 969 (2009).
24 Therefore, class certification of the PAGA claims is not required.

25 59. Plaintiffs seeks civil penalties pursuant to PAGA for violations of the following Labor
26 Code provisions:

- 27 a. failure to pay overtime wages to Aggrieved Employees in violation of Wage Order No. 16
28

1 and Labor Code §§ 510, 558, 1194 and 1198;

2 b. failure to pay minimum wages to Aggrieved Employees in violation of Wage Order No.
3 16 and Labor Code §§ 1182.12, 1194, and 1197;

4 c. failure to provide the Aggrieved Employees with proper meal and rest periods in violation
5 of Wage Order No. 16 and Labor Code § 226.7;

6 d. failure to provide itemized wage statements to Aggrieved Employees in violation of Labor
7 Code §§ 226(a), 1174, and 1174.5;

8 e. failure to reimburse the Aggrieved Employees for purchase of protective footwear under
9 Labor Code § 2802;

10 f. failure to provide prompt payment of wages upon termination and/or resignation of
11 Aggrieved Employees in violation of Labor Code §§ 201.3, 201, 202, 203;

12 g. failure to keep required payroll records in violation of Wage Order No. 16 and Labor
13 Code §§ 1174 and 1174.5;

14 h. failure to promptly pay owed wages in violation of Labor Code §§ 201.3, 204.

15 60. With respect to violations of Labor Code §§ 510, 512, Labor Code § 558 imposes a civil
16 penalty in addition to any other penalty provided by law of fifty dollars (\$50) for initial violations for
17 each underpaid employee for each pay period for which the employee was underpaid in addition to an
18 amount sufficient to recover unpaid wages, and one hundred dollars (\$100) for subsequent violations for
19 each underpaid employee for each pay period for which the employee was underpaid in addition to an
20 amount sufficient to recover underpaid wages. Moreover, Plaintiff seeks civil penalties in the amount of
21 unpaid wages owed to Aggrieved Employees pursuant to Labor Code § 558(a)(3).

22 61. With respect to violations of Labor Code § 226(a), Labor Code § 226.3 imposes a civil
23 penalty in addition to any other penalty provided by law of two hundred fifty dollars (\$250) per
24 aggrieved employee for the first violation, and one thousand dollars (\$1,000) per aggrieved employee for
25 each subsequent violation of Labor Code § 226(a).

26 62. With respect to violations of Labor Code § 204, Labor Code § 210 imposes a civil penalty
27 of \$100, and for subsequent violations \$200.
28

63. With respect to violations of Labor Code § 1174, Labor Code § 1174.5 imposes a civil penalty of \$500.

64. Labor Code § 2699 *et seq.* imposes a civil penalty of one hundred dollars (\$100) per pay period, per aggrieved employee for initial violations, and two hundred dollars (\$200) per pay period, per aggrieved employee for subsequent violations for all Labor Code provisions for which a civil penalty is not specifically provided, including the applicable Wage Order and Labor Code §§ 201, 201.3, 202, 203, 221, 226(a), 226.7, 226.8, 510, 1174, 1182.12, 1194, 1197, 1198, and 2802.

65. Plaintiff replead, reallege, and incorporate by reference each and every allegation set forth in this Complaint.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment as follows:

1. That, with respect to the First Claim for Relief, the State of California and Plaintiff be awarded civil penalties, attorneys' fees, and costs according to proof. Plaintiffs request civil penalties due to Plaintiffs and other similarly aggrieved employees, and the State of California according to proof pursuant to Labor Code §§ 558 and 2699(a) and (f) including, but not limited to: (1) \$50.00 for each initial violation and \$100 for each subsequent violation of Labor Code § 558 per employee per pay period plus an amount sufficient to recover the unpaid wages and; (2) \$100.00 for each initial violation and \$200 for each subsequent violation per employee per pay period for the violations of the Labor Code Sections cited in Labor Code § 2699.5;

2. For such further relief as the Court may order, including attorney's fees, costs, and interest pursuant to Labor Code sections 218.5 and 218.6 and Code of Civil Procedure section 1021.5, in an amount according to proof.

DATED: March 26, 2022

HARRIS & RUBLE



Alan Harris
David Garrett
Attorney for Plaintiffs

INDEX TO EXHIBITS

Exhibit 1	May 24, 2021, PAGA Letter to LWDA
------------------	-----------------------------------

Exhibit 1

HARRIS & RUBLE

ATTORNEYS AND COUNSELORS AT LAW

SOUTHERN CALIFORNIA OFFICE:

655 NORTH CENTRAL AVE 17th FL
GLENDALE CA 91203
TELEPHONE: 323.962.3777
FAX: 323.962.3004
www.harrisandruble.com

ALAN HARRIS

PRIYA MOHAN
DAVID GARRETT
MIN JI GAL
LIN ZHAN

NORTHERN CALIFORNIA OFFICE:

116 E. BLITHEDALE AVE SUITE 2
MILL VALLEY, CA 94941
TELEPHONE: 312.543.0967
FAX: 323.962.3004

SUBMITTED ONLINE

May 24, 2021

California Labor & Workforce Development Agency

Re: *Christian Marron-Barajas and Carlos Julian Martinez –PAGA Notice*

To whom it may concern:

Judicial Council of California (JCC)’s amended Emergency Rule 9 (Effective on May 29, 2020), provides: “Notwithstanding any other law, the statutes of limitations and repose for civil causes of action that exceed 180 days are tolled from April 6, 2020, until October 1, 2020.” The Advisory Committee Comment notes that: “Emergency rule 9 is intended to apply broadly to toll any statute of limitations on the filing of a pleading in court asserting a civil cause of action. The term “civil causes of action” includes special proceedings. (See Code Civ. Proc., §§ 312, 363 [“action,” as used in title 2 of the code (Of the Time of Commencing Civil Actions), is construed “as including a special proceeding of a civil nature”). The rule also applies to statutes of limitations on filing of causes of action in court found in codes other than the Code of Civil Procedure.”

Pursuant to the applicable provisions of the California Labor Code Private Attorneys General Act, Christian Marron-Barajas and Carlos Julian Martinez (collectively, “Plaintiffs”) hereby alleges with respect to her employment with DPI Specialty Foods, Inc. (“Defendants”), that Defendants violated provisions of the California Labor Code. Christian Marron-Barajas and Carlos Julian Martinez worked for Defendants as warehouseman and freezer employees up until approximately May 15, 2021. Plaintiffs worked many hours each day for Defendant, but Defendant has failed to properly compensate Plaintiff and/or other persons who performed crew member production services for Defendant in California (“Aggrieved Employees”).

Defendants are each a company which at all times relevant herein, conducted business within the County of Los Angeles of the State of California. Plaintiff and other Aggrieved Employees worked many hours and were not timely paid for their work, or paid at all. In addition, Defendant failed to provide Aggrieved Plaintiffs with wage statements with the information required by Labor Code section 226(a), and were not properly compensated for overtime.

Plaintiffs contend that Sections 201, 202, 203, 226, 226.8, 510, 512, 558, 1194, 1198, 2802, and 2699 et seq. of the California Labor Code and the applicable Wage Order enables Plaintiffs to recover civil penalties under PAGA, as well as attorneys' fees and costs from Defendants through a civil action on behalf of themselves and other Aggrieved Employees.

Plaintiffs contend that Defendant failed to timely pay wages due during employment and final wages following the end of employment.

Defendants failed to provide Aggrieved Employees wage statements with the information required by Labor Code section 226(a) including but not limited to the name and address of the legal entity that is the employer, and were not properly compensated for minimum wage and overtime because they were not timely paid. Biggs v. Wilson, 1 F.3d 1537, 1538 (9th Cir. 1993). Defendant also failed to reimburse the Aggrieved Employees for expenses reasonably incurred during the performance of their duties.

In addition, Plaintiffs requested production of their documents under sections 226(b), 432, and 1198.5 of the California Labor Code, and the defense failed to make timely, complete response. For example, no punch records were provided by Christian Marron.

Plaintiffs will seek to recover the PAGA penalties through a representative action permitted by PAGA, Labor Code section 2810.3 and the California Supreme Court in Arias v. Superior Court, 46 Cal. 4th 969 (2009). Plaintiffs will seek civil penalties pursuant to PAGA for violations of the following Labor Code provisions:

- a. failure to pay overtime wages in violation of Wage Order No. 4 and Labor Code §§510, 558, 1194 and 1198;
- b. failure to pay minimum wages in violation of Wage Order No. 4 and Labor Code §§1182.12, 1194, and 1197;
- c. failure to provide itemized wage statements in violation of Labor Code §§ 226(a), 1174, and 1174.5;
- d. failure to provide prompt payment of wages upon termination and/or resignation in violation of Labor Code §§201, 202, 203;
- e. failure to reimburse for all reasonably necessary expenditures and losses incurred in direct consequence of the discharge of their duties, including but not limited costs of their vehicles, insurance, rental fees, mileage, cell phone usage, equipment purchases, and telephone usage in violation of Labor Code § 2802;
- f. failure to keep required payroll records in violation of Wage Order No. 9 and Labor Code §§ 1174 and 1174.5.

More specifically, Plaintiffs will seek civil penalties pursuant to PAGA for violations of the following Labor Code provisions:

1. **Failure to pay wages and/or final wages to Plaintiffs and Aggrieved Employees in violation of Labor Code §§ 201, 202 and 203.** With respect to violations of Labor Code § 201 and § 202, Plaintiffs contend that the failure of Defendants to make final payments within the time provided for has been and is "willful" within the meaning of such word as used in Section 203 of the California Labor Code and that, accordingly, each Aggrieved Employee who was not timely paid his or her final wages is entitled to civil penalties. Labor

Code section 203 provides for a penalty of wages to be paid at the same rate until the wages are paid for up to thirty days.

2. **Failure to timely pay wages to Plaintiffs and Aggrieved Employees in violation of Labor Code §§ 204.** Defendants failed to timely pay wages earned to Plaintiffs and Aggrieved Employees. For example, freezer pay premiums of \$0.50 per hour have not been paid to Plaintiffs and Aggrieved Employees for over a year.
3. **Failure to provide itemized wage statements to Plaintiffs and Aggrieved Employees in violation of Labor Code § 226(a).** Plaintiffs and other Aggrieved Employees have not been provided a wage statement as required by Labor Code section 226(a). The foregoing was the intentional misconduct of Defendants that was intended to mislead and injure Plaintiffs and other Aggrieved Employees insofar as they were subjected to confusion and deprived of information to which they were legally entitled. Section 226(e) provides that any employee who suffers injury as a result of a knowing and intentional failure by the employer to comply with its obligation to provide wage statements containing all of the information referenced above is entitled to recover the greater of his actual damages or \$50 for the first violation by the employer. The employee is also entitled to recover \$100 for each violation in a subsequent pay period, not to exceed an aggregate penalty of \$4,000.
4. **Failure to provide proper rest and meal periods to Plaintiffs and Aggrieved Employees.** Plaintiffs and Aggrieved Employees were not provided with timely meal and rest periods in violation of Labor Code sections 512 and 226.7 and the applicable Wage Order. Labor Code section 226.7 requires “one additional hour of pay at the employee’s regular rate of compensation for each workday that the meal or rest or recovery period is not provided.”
5. **Improper classification of employees as independent contractors in violation of Labor Code § 226.8.** Plaintiffs and Aggrieved Employees were willfully misclassified as independent contractors even though they were not exempt employees. Labor Code section 226.8 requires “a civil penalty of not less than five thousand dollars (\$5,000) and not more than fifteen thousand dollars (\$15,000) for each violation, in addition to any other penalties or fines permitted by law.” If the employer is found to have engaged in a “pattern or practice” of misclassifying employees, it is subject to a “civil penalty of not less than ten thousand dollars (\$10,000) and not more than twenty-five thousand dollars (\$25,000) for each violation, in addition to any other penalties or fines permitted by law.” Cal. Lab. Code § 226.8(c).
6. **Failure to reimburse necessary business expenses under Labor Code § 2802.** Plaintiffs and Aggrieved Employees were not reimbursed for necessary business expenses. For example, employees were not reimbursed for their required safety shoes as required by law. Labor Code 2699 *et seq.* imposes a civil penalty of one hundred dollars per pay period per aggrieved employee for initial violations, and two hundred dollars per pay period per aggrieved employee for subsequent violations for all Labor Code provisions for which a civil penalty is not specifically provided.
7. **Failure to pay minimum and overtime wages to Plaintiffs and Aggrieved Employees in violation of Labor Code §§ 510, 558, 1194, and 1198.** Both late payment and non-payment of minimum wages violate the state statute requiring the payment of a minimum hourly wage. Labor Code section 558 imposes a civil penalty in addition to any other penalty provided by law of fifty dollars (\$50) for initial violations for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover unpaid wages, and one hundred (\$100) for subsequent violations for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages.

8. **Failure to keep complete and accurate payroll records.** Failure to keep complete and accurate payroll records relating to Plaintiffs and Aggrieved Employees in accordance with California Labor Code section 1174(d) constitutes unlawful and/or unfair activity prohibited by California Labor Code section 1174(d).

Please advise whether you will proceed with an investigation of this matter or whether Plaintiffs may seek a civil-penalty recovery for the alleged violations under the Labor Code Private Attorneys General Act through their private counsel.

Very truly yours,

A handwritten signature in black ink that reads "Alan Harris". The signature is written in a cursive, slightly slanted style.

Alan Harris
David Garrett

Cc: (Via Certified Mail)

DPI SPECIALTY FOODS, INC.
c/o CSC Lawyers Incorporating Service
2710 Gateway Oaks Drive, Ste. 150N
Sacramento, CA 95833

DPI SPECIALTY FOODS, INC.
601 Rockefeller Ave.
Ontario CA 91761