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SUPERIOR COURT OF THE STATE OF CALIFORNIA**IN AND FOR THE COUNTY OF LOS ANGELES**SALVADOR VENEGAS, on behalf of the
State of California, as a private attorney
general,

Plaintiff,

vs.

WWF OPERATING COMPANY, LLC, a
Limited Liability Company; DANONE
NORTH AMERICA PUBLIC BENEFIT
CORPORATION, a Corporation; DANONE
US, LLC, a Limited Liability Company
DOES 1 through 50, inclusive,

Defendants.

Case No. 21PSCV00643**REPRESENTATIVE ACTION
COMPLAINT FOR:**1. Civil Penalties Pursuant to Labor Code §
2699, *et seq.* for violations of Labor Code
§§ 201, 202, 203, 204 *et seq.*, 210, 221,
226(a), 226.7, 227.3, 246 *et seq.*, 351, 510,
512, 558(a)(1)(2), 1194, 1197, 1197.1,
1198, 2802, California Code of
Regulations, Title 8, Section 11040,
Subdivision 5(A)-(B)

1 Plaintiff Salvador Venegas (“PLAINTIFF”) on behalf of the people of the State of
2 California and as an “aggrieved employee” acting as a private attorney general under the Labor
3 Code Private Attorney General Act of 2004, § 2699, *et seq.* (“PAGA”) only, alleges on
4 information and belief, except for his own acts and knowledge which are based on personal
5 knowledge, the following:

6 7 **INTRODUCTION**

8 1. PLAINTIFF brings this action against Defendants WWF Operating Company,
9 LLC, Danone North America Public Benefit Corporation and Danone US, LLC (referred to as
10 “DEFENDANT”) seeking only to recover PAGA civil penalties for himself, and on behalf of
11 all current and former aggrieved employees that worked for DEFENDANT. PLAINTIFF does
12 **not seek to recover anything other than penalties as permitted by California Labor Code**
13 **§ 2699**. To the extent that statutory violations are mentioned for wage violations, PLAINTIFF
14 does not seek underlying general and/or special damages for those violations, but simply the
15 civil penalties permitted by California Labor Code § 2699.

16 2. California has enacted the PAGA to permit an individual to bring an action on
17 behalf of himself and on behalf of others for PAGA penalties *only*, which is the precise and sole
18 nature of this action.

19 3. Accordingly, PLAINTIFF seeks to obtain all applicable relief for
20 DEFENDANT’s violations under PAGA and solely for the relief as permitted by PAGA – that
21 is, penalties and any other relief the Court deems proper pursuant to the PAGA. Nothing in this
22 complaint should be construed as attempting to obtain any relief that would not be available in
23 a PAGA-only action.

24 25 **THE PARTIES**

26 4. Defendant WWF Operating Company, LLC is a limited liability company that at all
27 relevant times mentioned herein conducted and continues to conduct substantial business in the
28 state of California.

1 5. Defendant Danone North America Public Benefit Corporation is a corporation that
2 at all relevant times mentioned herein conducted and continues to conduct substantial business
3 in the state of California.

4 6. Defendant Danone US, LLC is a limited liability company that at all relevant times
5 mentioned herein conducted and continues to conduct substantial business in the state of
6 California.

7 7. Defendants WWF Operating Company, LLC, Danone North America Public
8 Benefit Corporation and Danone US, LLC were the joint employers of PLAINTIFF as
9 evidenced by paycheck and by the company PLAINTIFF performed work for respectively, and
10 are therefore jointly responsible as employers for the conduct alleged herein, and are therefore
11 collectively referred to herein as "DEFENDANT."

12 8. PLAINTIFF was employed by DEFENDANT from April of 2016 to December
13 of 2020 and was at all times classified by DEFENDANT as a non-exempt employee, paid on
14 an hourly basis, and entitled to the legally required meal and rest periods and payment of
15 minimum and overtime wages due for all time worked.

16 9. PLAINTIFF, and such persons that may be added from time to time who satisfy
17 the requirements and exhaust the administrative procedures under the Private Attorney General
18 Act, brings this Representative Action on behalf of the State of California with respect to
19 himself and all individuals who are or previously were employed by WWF Operating Company,
20 LLC and/or Danone North America Public Benefit Corporation and/or Danone US, LLC in
21 California and who were classified as non-exempt employees ("AGGRIEVED EMPLOYEES")
22 during the time period of June 3, 2020 until a date as determined by the Court (the "PAGA
23 PERIOD").

24 10. PLAINTIFF, on behalf of himself and all AGGRIEVED EMPLOYEES presently
25 or formerly employed by DEFENDANT during the PAGA PERIOD, brings this representative
26 action pursuant to Labor Code § 2699, *et seq.* seeking fixed civil penalties for DEFENDANT's
27 violation of California Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 221, 226(a), 226.7, 227.3,
28 246 *et seq.*, 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of

1 Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), and the applicable Wage Order(s).
2 Based upon the foregoing, PLAINTIFF and all AGGRIEVED EMPLOYEES are aggrieved
3 employees within the meaning of Labor Code § 2699, *et seq.*

4 11. The true names and capacities, whether individual, corporate, subsidiary,
5 partnership, associate or otherwise of defendants DOES 1 through 50, inclusive, are presently
6 unknown to PLAINTIFF who therefore sues these Defendants by such fictitious names pursuant
7 to Cal. Civ. Proc. Code § 474. PLAINTIFF will seek leave to amend this Complaint to allege
8 the true names and capacities of Does 1 through 50, inclusive, when they are ascertained.
9 PLAINTIFF is informed and believes, and based upon that information and belief alleges, that
10 the Defendants named in this Complaint, including DOES 1 through 50, inclusive, are
11 responsible in some manner for one or more of the events and happenings that proximately
12 caused the injuries and damages hereinafter alleged.

13 12. The agents, servants and/or employees of the Defendants and each of them acting
14 on behalf of the Defendants acted within the course and scope of his, her or its authority as the
15 agent, servant and/or employee of the Defendants, and personally participated in the conduct
16 alleged herein on behalf of the Defendants with respect to the conduct alleged herein.
17 Consequently, the acts of each Defendant are legally attributable to the other Defendants and
18 all Defendants are jointly and severally liable to PLAINTIFF and the other AGGRIEVED
19 EMPLOYEES, for the loss sustained as a proximate result of the conduct of the Defendants'
20 agents, servants and/or employees.

21 **THE CONDUCT**

22
23 13. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT is
24 required to pay PLAINTIFF and the AGGRIEVED EMPLOYEES for all their time worked,
25 meaning the time during which an employee is subject to the control of an employer, including
26 all the time the employee is suffered or permitted to work. DEFENDANT required PLAINTIFF
27 and the AGGRIEVED EMPLOYEES to work from time to time while they were clocked out
28 for what was supposed to be their off duty meal break. DEFENDANT required PLAINTIFF

1 and the AGGRIEVED EMPLOYEES to work off the clock without paying them for all the time
2 they performed duties while on their meal break, specifically by failing to provide enough labor
3 hours to accomplish all the job tasks that DEFENDANT expected PLAINTIFF and the
4 AGGRIEVED EMPLOYEES to complete on a daily and/or weekly basis. PLAINTIFF and the
5 AGGRIEVED EMPLOYEES also worked off the clock with respect to time spent undergoing
6 mandatory drug testing or any other testing and/or examination required as a condition of
7 employment. Additionally, DEFENDANT engaged in the practice of requiring PLAINTIFF
8 and the AGGRIEVED EMPLOYEES to perform work while off the clock in that
9 DEFENDANT, as a condition of employment, required these employees to wait in line and
10 submit to mandatory temperature checks for COVID-19 screening prior to clocking into
11 DEFENDANT's timekeeping system for the workday. Further, PLAINTIFF and other
12 AGGRIEVED EMPLOYEES from time to time were not paid wages for all time worked,
13 including overtime wages, such that in the aggregate employees were underpaid wages as a
14 result of DEFENDANT's pattern and practice of unevenly rounding time worked by its
15 employees. As a result, PLAINTIFF and other AGGRIEVED EMPLOYEES forfeited
16 minimum wage and overtime compensation by from time to time working without their time
17 being accurately recorded and without compensation at the applicable minimum wage and
18 overtime rates. DEFENDANT's policy and practice not to pay PLAINTIFF and other
19 AGGRIEVED EMPLOYEES for all time worked is evidenced by DEFENDANT's business
20 records.

21 14. As a result of their rigorous work schedules, PLAINTIFF and other AGGRIEVED
22 EMPLOYEES were also from time to time unable to take off duty meal breaks and were not
23 fully relieved of duty for meal periods. PLAINTIFF and other AGGRIEVED EMPLOYEES
24 were from time to time required to perform work as ordered by DEFENDANT for more than
25 five (5) hours during a shift without receiving an off-duty meal break. Further, DEFENDANT
26 failed to provide PLAINTIFF and other AGGRIEVED EMPLOYEES with a second off-duty
27 meal period from time to time in which these employees were required by DEFENDANT to
28 work ten (10) hours of work from time to time. PLAINTIFF and the other AGGRIEVED

1 EMPLOYEES therefore forfeited meal breaks without additional compensation and in
2 accordance with DEFENDANT's corporate policy and practice.

3 15. During the PAGA PERIOD, PLAINTIFF and other AGGRIEVED EMPLOYEES
4 were also required from time to time to work in excess of four (4) hours without being provided
5 ten (10) minute rest periods. Further, these employees were denied their first rest periods of at
6 least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours from time to
7 time, a first and second rest period of at least ten (10) minutes for some shifts worked of
8 between six (6) and eight (8) hours from time to time, and a first, second and third rest period
9 of at least ten (10) minutes for some shifts worked of ten (10) hours or more from time to time.
10 PLAINTIFF and other AGGRIEVED EMPLOYEES were also not provided with one hour
11 wages in lieu thereof. As a result of their rigorous work schedules, PLAINTIFF and other
12 AGGRIEVED EMPLOYEES were from time to time denied their proper rest periods by
13 DEFENDANT and DEFENDANT's managers. Additionally, the applicable California Wage
14 Order requires employers to provide employees with off-duty rest periods, which the California
15 Supreme Court defined as time during which an employee is relieved from all work related
16 duties and free from employer control. In so doing, the Court held that the requirement under
17 California law that employers authorize and permit all employees to take rest period means that
18 employers must relieve employees of all duties and relinquish control over how employees
19 spend their time which includes control over the locations where employees may take their rest
20 period. Employers cannot impose controls that prohibit an employee from taking a brief walk -
21 five minutes out, five minutes back. Here, DEFENDANT's policy restricted PLAINTIFF and
22 other AGGRIEVED EMPLOYEES from unconstrained walks and was unlawful based on
23 DEFENDANT's rule which stated PLAINTIFF and other AGGRIEVED EMPLOYEES could
24 not leave the work premises during their rest period.

25 16. State law provides that employees must be paid overtime and meal and rest break
26 premium pay at one-and-one-half times their "regular rate of pay." PLAINTIFF and other
27 AGGRIEVED EMPLOYEES were compensated at an hourly rate plus incentive pay that was
28 tied to specific elements of an employee's performance.

1 17. The second component of PLAINTIFF's and other AGGRIEVED EMPLOYEES'
2 compensation was DEFENDANT's non-discretionary incentive program that paid PLAINTIFF
3 and other AGGRIEVED EMPLOYEES incentive wages based on their performance for
4 DEFENDANT. The non-discretionary incentive program provided all employees paid on an
5 hourly basis with incentive compensation when the employees met the various performance
6 goals set by DEFENDANT. However, when calculating the regular rate of pay in order to pay
7 overtime and premiums for meal and rest break violations to PLAINTIFF and other
8 AGGRIEVED EMPLOYEES, DEFENDANT failed to include the incentive compensation as
9 part of the employees' "regular rate of pay" for purposes of calculating overtime pay and
10 premium pay for meal and rest break violations. Management and supervisors described the
11 incentive program to potential and new employees as part of the compensation package. As a
12 matter of law, the incentive compensation received by PLAINTIFF and other AGGRIEVED
13 EMPLOYEES must be included in the "regular rate of pay." The failure to do so has resulted
14 in an underpayment of overtime compensation and meal and rest break premium pay to
15 PLAINTIFF and other AGGRIEVED EMPLOYEES by DEFENDANT.

16 18. DEFENDANT also failed to provide PLAINTIFF and the other AGGRIEVED
17 EMPLOYEES with complete and accurate wage statements which failed to show, among other
18 things, the correct gross and net wages earned. Cal. Lab. Code § 226 provides that every
19 employer shall furnish each of his or her employees with an accurate itemized wage statement
20 in writing showing, among other things, gross wages earned and all applicable hourly rates in
21 effect during the pay period and the corresponding amount of time worked at each hourly rate.
22 Aside, from the violations listed above, DEFENDANT failed to issue to PLAINTIFF an
23 itemized wage statement that lists all the requirements under California Labor Code 226 *et seq.*
24 As a result, DEFENDANT from time to time provided PLAINTIFF and the other AGGRIEVED
25 EMPLOYEES with wage statements which violated Cal. Lab. Code § 226.

26 19. Cal. Lab. Code § 204 provides that "[a]ll wages. . . earned by any person in any
27 employment are due and payable twice during each calendar month, on days designated in
28 advance by the employer as the regular paydays." Further, Cal. Lab. Code § 204(d) expressly

1 requires employers to pay employees all wages owed within seven (7) days of the close of the
2 payroll period. DEFENDANT from time to time failed to pay PLAINTIFF and other
3 AGGRIEVED EMPLOYEES all wages owed to them within seven (7) days of the close of the
4 payroll period, including but not limited to for the "Gross Up Pay" wage payments.

5 20. Pursuant to Cal. Lab. Code Section 221, "It shall be unlawful for any employer
6 to collect or receive from an employee any part of wages theretofore paid by said employer to
7 said employee." DEFENDANT failed to pay all compensation due to PLAINTIFF and other
8 AGGRIEVED EMPLOYEES, made unlawful deductions from compensation payable to
9 PLAINTIFF and other AGGRIEVED EMPLOYEES, failed to disclose all aspects of the
10 deductions from compensation payable to PLAINTIFF and other AGGRIEVED EMPLOYEES,
11 and thereby failed to pay these employees all wages due at each applicable pay period and upon
12 termination. PLAINTIFF and other AGGRIEVED EMPLOYEES seek recovery of penalties
13 related to all illegal deductions from wages according to proof, interest, attorney fees and costs.

14 21. DEFENDANT underpaid sick pay wages to PLAINTIFF and other AGGRIEVED
15 EMPLOYEES by failing to pay such wages at the regular rate of pay. Specifically, PLAINTIFF
16 and other non-exempt employees earn non-discretionary remuneration. Rather than pay sick
17 pay at the regular rate of pay, DEFENDANT underpaid sick pay to PLAINTIFF and other
18 AGGRIEVED EMPLOYEES at their base rates of pay.

19 22. DEFENDANT intentionally and knowingly failed to reimburse and indemnify
20 PLAINTIFF and the other AGGRIEVED EMPLOYEES for required business expenses
21 incurred by PLAINTIFF and other AGGRIEVED EMPLOYEES in direct consequence of
22 discharging their duties on behalf of DEFENDANT. Under California Labor Code Section
23 2802, employers are required to indemnify employees for all expenses incurred in the course
24 and scope of their employment. Cal. Lab. Code § 2802 expressly states that "an employer shall
25 indemnify his or her employee for all necessary expenditures or losses incurred by the employee
26 in direct consequence of the discharge of his or her duties, or of his or her obedience to the
27 directions of the employer, even though unlawful, unless the employee, at the time of obeying
28 the directions, believed them to be unlawful."

1 23. In the course of their employment PLAINTIFF and other AGGRIEVED
2 EMPLOYEES as a business expense, were required by DEFENDANT to use their own personal
3 cellular phones and personal vehicles as a result of and in furtherance of their job duties as
4 employees for DEFENDANT but were not reimbursed or indemnified by DEFENDANT for the
5 cost associated with the use of their personal cellular phones for DEFENDANT's benefit.
6 Specifically, PLAINTIFF and other AGGRIEVED EMPLOYEES were required by
7 DEFENDANT to use their personal cellular phones to respond to managers while off the clock
8 (which also results in minimum wage and overtime violations). As a result, in the course of
9 their employment with DEFENDANT, PLAINTIFF and other AGGRIEVED EMPLOYEES
10 incurred unreimbursed business expenses which included, but were not limited to, costs related
11 to the use of their personal cellular phones all on behalf of and for the benefit of DEFENDANT.

12 24. In violation of the applicable sections of the California Labor Code and the
13 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT as
14 a matter of company policy, practice and procedure, intentionally and knowingly failed to
15 compensate PLAINTIFF and the other AGGRIEVED EMPLOYEES for missed meal and rest
16 periods. This policy and practice of DEFENDANT is intended to purposefully avoid the
17 payment for all time worked as required by California law which allows DEFENDANT to
18 illegally profit and gain an unfair advantage over competitors who complied with the law. To
19 the extent equitable tolling operates to toll claims by the AGGRIEVED EMPLOYEES against
20 DEFENDANT, the PAGA PERIOD should be adjusted accordingly.

21 25. By reason of this conduct applicable to PLAINTIFF and all AGGRIEVED
22 EMPLOYEES, DEFENDANT engaged in a company-wide policy and procedure which fails
23 to accurately calculate and record all missed meal and rest periods and failed to pay all
24 minimum and overtime wages due to PLAINTIFF and other AGGRIEVED EMPLOYEES. The
25 proper recording of these employees' missed meal and rest breaks is the DEFENDANT's
26 burden. As a result of DEFENDANT's intentional disregard of the obligation to meet this
27 burden, DEFENDANT fails to properly calculate and/or pay all required compensation for work
28 performed by the AGGRIEVED EMPLOYEES and violated the California Labor Code and

1 regulations promulgated thereunder as herein alleged.

2 26. All of the conduct and violations alleged herein occurred during the PAGA
3 PERIOD. To the extent that any of the conduct and violations alleged herein did not affect
4 PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those violations that
5 affected other AGGRIEVED EMPLOYEES pursuant to *Carrington v. Starbucks Corp.* 2018
6 AJDAR 12157 (Certified for Publication 12/19/18).

7
8 **JURISDICTION AND VENUE**

9 27. This Court has jurisdiction over this Action pursuant to California Code of Civil
10 Procedure, Section 410.10.

11 28. Venue is proper in this Court pursuant to California Code of Civil Procedure,
12 Sections 395 and 395.5, because PLAINTIFF worked in this County for DEFENDANT, resides
13 in this County, and DEFENDANT (i) currently maintains and at all relevant times maintained
14 offices and facilities in this County and/or conducts substantial business in this County, and (ii)
15 committed the wrongful conduct herein alleged in this County against PLAINTIFF and the
16 AGGRIEVED EMPLOYEES.

17
18 **FIRST CAUSE OF ACTION**

19 **For Violation of the Private Attorneys General Act**

20 **[Cal. Lab. Code §§ 2698, *et seq.*]**

21 **(By PLAINTIFF and Against All Defendants)**

22 29. PLAINTIFF realleges and incorporates by this reference, as though fully set
23 forth herein, the prior paragraphs of this Complaint.

24 30. PAGA is a mechanism by which the State of California itself can enforce state
25 labor laws through the employee suing under the PAGA who do so as the proxy or agent of
26 the state's labor law enforcement agencies. An action to recover civil penalties under
27 PAGA is fundamentally a law enforcement action designed to protect the public and not to
28 benefit private parties. The purpose of the PAGA is not to recover damages or restitution,

1 but to create a means of "deputizing" citizens as private attorneys general to enforce the
2 Labor Code. In enacting PAGA, the California Legislature specified that "it was ... in the
3 public interest to allow aggrieved employees, acting as private attorneys general to recover
4 civil penalties for Labor Code violations ..." Stats. 2003, ch. 906, § 1. Accordingly, PAGA
5 claims cannot be subject to arbitration.

6 31. PLAINTIFF, and such persons that may be added from time to time who
7 satisfy the requirements and exhaust the administrative procedures under the Private
8 Attorney General Act, brings this Representative Action on behalf of the State of California
9 with respect to himself and all individuals who are or previously were employed by
10 WWF Operating Company, LLC and/or Danone North America Public Benefit Corporation
11 and/or Danone US, LLC in California and who were classified as non-exempt employees
12 ("AGGRIEVED EMPLOYEES") during the time period of June 3, 2020 until a date as
13 determined by the Court (the "PAGA PERIOD").

14 32. On June 3, 2021, PLAINTIFF gave written notice by electronic mail to the
15 Labor and Workforce Development Agency (the "Agency") and by certified mail to the
16 employer of the specific provisions of this code alleged to have been violated as required by
17 Labor Code § 2699.3. The statutory waiting period for PLAINTIFF to add these allegations
18 to the Complaint has expired. As a result, pursuant to Section 2699.3, PLAINTIFF may now
19 commence a representative civil action under PAGA pursuant to Section 2699 as the proxy
20 of the State of California with respect to all AGGRIEVED EMPLOYEES as herein defined.

21 33. The policies, acts and practices heretofore described were and are an unlawful
22 business act or practice because DEFENDANT (a) failed to provide PLAINTIFF and the
23 other AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to properly
24 record and provide legally required meal and rest periods, (c) failed to pay minimum wages,
25 (d) failed to pay overtime and sick pay wages, (e) failed to reimburse employees for required
26 expenses, and (f) failed to provide wages when due, all in violation of the applicable Labor
27 Code sections listed in Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 221, 226(a), 226.7,
28 227.3, 246 *et seq.*, 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California

1 Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), and the applicable Wage
2 Order(s), and thereby gives rise to civil penalties as a result of such conduct.¹ PLAINTIFF
3 hereby seeks recovery of only civil penalties as prescribed by the Labor Code Private
4 Attorney General Act of 2004 as the representative of the State of California for the illegal
5 conduct perpetrated on PLAINTIFF and the other AGGRIEVED EMPLOYEES.

6
7 **PRAYER FOR RELIEF**

8 WHEREFORE, PLAINTIFF prays for judgment against each Defendant, jointly and
9 severally, as follows:

10 1. On behalf of the State of California and with respect to all AGGRIEVED
11 EMPLOYEES:

12 A) Recovery of civil penalties as prescribed by the Labor Code Private
13 Attorneys General Act of 2004; and,

14 B) An award of attorneys' fees and cost of suit, as allowable under the
15 law, including, but not limited to, pursuant to Labor Code §2699.

16 Dated: August 9, 2021 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW
17 LLP

18
19 By: /s/ Norman Blumenthal
20 Norman B. Blumenthal
21 Attorneys for Plaintiff
22
23
24
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27 _____
28 ¹Plaintiff specifically excludes and/or does not allege any claims under California Labor
Code §558(a)(3).