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Electronically Filed
11/23/2021 3:02 PM
Superior Court of California
County of Stanislaus
Clerk of the Court
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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF STANISLAUS

RAMIRO GUEVARA, on behalf of himself and
all others similarly situated,

Plaintiff,

v.

BUNGE OILS, INC., a Delaware Corporation;
and DOES 1-50, inclusive.

Defendants.

CASE NO.: CV-21-004207

**FIRST AMENDED CLASS AND PAGA
ACTION COMPLAINT FOR:**

- (1) FAILURE TO PAY ALL MINIMUM WAGES;
- (2) FAILURE TO PAY ALL OVERTIME WAGES;
- (3) MEAL PERIOD VIOLATIONS;
- (4) REST PERIOD VIOLATIONS;
- (5) WAGE STATEMENT VIOLATIONS;
- (6) WAITING TIME PENALTIES;
- (7) UNFAIR COMPETITION; and
- (8) PAGA PENALTIES

DEMAND FOR JURY TRIAL

1 Plaintiff Ramiro Guevara (“Plaintiff”) on behalf of himself, and all other similarly situated
2 employees, alleges, and complains of defendants Bunge Oils, Inc. and DOES 1 to 50 (collectively,
3 “Defendants”) and each of them, as follows:

4 **INTRODUCTION**

5 1. Defendant Bunge Oils, Inc. is a global agribusiness corporation producing, sourcing,
6 and refining edible oils and grains, as well as snacks and other ingredients. Defendant operates an oil
7 packing plant in Modesto, California. Plaintiff brings this class and PAGA representative action
8 against Defendants for alleged violations of the California Labor Code and Business and Professions
9 Code as set forth below.

10 2. Plaintiff alleges that Defendants had an unlawful rounding practice, uniform
11 practice/policy that did not credit Plaintiff and other similarly situated employees with time spent
12 donning and doffing personal protective equipment (“PPE”) which over time resulted in a failure to
13 pay for all hours worked. Plaintiff further alleges that Defendants failed to pay all overtime
14 compensation at the legal rate, and that Defendants’ meal and rest period policies and practices failed
15 to provide him and all other similarly situated employees with compliant meal and rest periods, or
16 premium wages in lieu thereof. Additionally, Plaintiff alleges that Defendants failed to provide non-
17 exempt employees with accurate written itemized wage statements and failed to timely pay final
18 wages upon separation of employment. Based on these alleged Labor Code violations, Plaintiff now
19 brings this class action to recover unpaid wages, restitution, penalties, and other related relief on
20 behalf of himself and all others similarly situated.

21 **JURISDICTION AND VENUE**

22 3. Plaintiff, on behalf of himself and all others similarly situated employees hereby brings
23 this class action for recovery of unpaid wages and penalties under California Labor Code §§ 201-
24 203, 204, 210, 226a, 226.7, 510, 516, 512, 1182.12, 1194, 1194.2, and 1197 and applicable Industrial
25 Welfare Commission Wage Orders (“Wage Orders”), in addition to seeking declaratory relief and
26 restitution pursuant to California Business and Professions Code § 17200, *et. seq.* This class action is
27 brought pursuant to California Code of Civil Procedure § 382.

4. This Court has jurisdiction over Defendants' violations of the California Labor Code and applicable Wage Orders because the amount in controversy exceeds this Court's jurisdictional minimum.

5. Venue is proper in this judicial district pursuant to California Code of Civil Procedure §§ 395(a) and 395.5, as most of the acts and omissions complained of herein occurred in the City of Modesto, County of Stanislaus. Defendants own, maintain offices, transact business, have an agent or agents within the County of Stanislaus, and/or otherwise are found within the County of Stanislaus, and Defendants are within the jurisdiction of this Court for purposes of service of process.

PARTIES

6. At all relevant times herein, Plaintiff, who is over the age of 18, was and currently is a California resident residing in the State of California. Defendants employed Plaintiff as a non-exempt employee in Modesto, California in the County of Stanislaus.

7. Plaintiff is informed and believes and thereon alleges that defendant Bunge Oils, Inc. is a Delaware corporation authorized to and doing business in Stanislaus County, California, and is and/or was the legal employer of Plaintiff and the Class Members during the applicable statutory periods. Plaintiff was, and is, a victim of Defendants' policies and/or practices complained of herein and has been deprived of the rights guaranteed to him by California Labor Code §§ 201-203, 204, 210, 226a, 226.7, 510, 512, 516, 1182.12, 1194, 1194.2, 1197, and California Business and Professions Code § 17200 *et seq.*, and applicable Wage Orders.

8. Plaintiff is informed and believes, and based thereon alleges, that during the four years preceding the filing of the Complaint and continuing to the present, Defendants did (and continue to do) business in the State of California, County of Stanislaus. Defendants operate/manage their facility in Modesto, California.

9. Plaintiff does not know the true names or capacities, whether individual, partner, or corporate, of the defendants sued herein as DOES 1 to 50, inclusive, and for that reason, said Defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to amend this Complaint when such true names and capacities are discovered. Plaintiff is informed, and believes, and thereon alleges, that each of said fictitious defendants, whether individual, partners, or

1 corporate, were responsible in some manner for the acts and omissions alleged herein, and
2 proximately caused Plaintiff and the Classes to be subject to the unlawful employment practices
3 alleged herein.

4 10. Plaintiff is informed, and believes, and thereon allege, that at all times mentioned
5 herein, Defendants were and are the employers of Plaintiff and all members of the Classes. At all
6 times herein mentioned, each of said Defendants participated in the doing of the acts hereinafter
7 alleged to have been done by the named Defendants; and furthermore, the Defendants, and each of
8 them, were the agents, servants, and employees of each and every one of the other Defendants, as
9 well as the agents of all Defendants, and at all times herein mentioned were acting within the course
10 and scope of said agency and employment. Defendants, and each of them, approved of, condoned,
11 and/or otherwise ratified each and every one of the acts or omissions complained of herein.

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

17 **COMMON FACTUAL ALLEGATIONS**

18 12. Defendants are a global agribusiness corporation producing, sourcing, and refining
19 edible oils and grains, as well as snacks and other ingredients. Defendants operate an oil packing
20 plant in Modesto, California.

21 13. Plaintiff is employed by Defendants as a non-exempt production associate employee at
22 the Modesto plant. Plaintiff and other non-exempt employees are or were employed as production
23 associate employees in Defendants' packing plant. Plaintiff and other non-exempt employees were
24 responsible for running and maintaining a production line – including but not limited to identifying
25 and handling products, checking quality, setting codes and labeling, interpreting tank inventories,
26 checking valve settings, and operating the various production lines.

1 14. At all relevant times, Plaintiff alleges other non-exempt employees were subjected to
2 the same policies, procedures, and practices, working conditions, and corresponding wage and hour
3 violations to which Plaintiff was subjected during his employment.

4 15. At all relevant times, Defendants have had a uniform payroll policy/practice of
5 rounding Plaintiff and other non-exempt employees' time entries to the nearest 15 minutes. As a
6 result of this rounding policy/practice, non-exempt employees were and are not compensated for all
7 the hours that they work and all of the overtime hours they work in violation of Labor Code §§
8 204,210, 510, 1194, 1197.1, 1199, and applicable Wage Orders. *See* 's *Candy Shops v. Superior Court*
9 (2012) 210 Cal. App. 4th 889, 907 [rounding time policies can be lawful, "if the rounding policy is
10 fair and neutral on its face and 'it is used in such a manner that it will not result, over a period of time,
11 in failure to compensate the employees properly for all the time they have actually worked,' See 29
12 C.F.R. § 785.48; see DLSE Manual, *supra*, §§ 47.1, 47.2.)"].

13 16. Here, Defendants' rounding policy/practice is not neutral and non-exempt employees
14 were subject to discipline, including termination, for being tardy in reporting to work. Moreover,
15 because Defendants are capable of tracking the time worked by non-exempt employees to the minute,
16 the rounding policy/practice itself exists not for the convenience or benefit of the employees who are
17 trying to report their time on timecards or computer log, but for Defendants' benefit.

18 17. As a result of the rounding policy, Plaintiff and other non-exempt employees were
19 uniformly underpaid for all hours worked, including all minimum and overtime wages, in violation
20 of Labor Code §§ 204, 510, 1194.2, 1197.1, 1199, and applicable Wage Orders. Accordingly, Plaintiff
21 and other non-exempt employees are entitled to recover liquidated damages for violations of Labor
22 Code § 1197.1 and penalties under Labor Code § 1199.

23 18. Moreover, at all relevant times, Plaintiff and other non-exempt employees were
24 required to wear personal protective equipment as condition of their jobs, including a uniform and
25 other safety gear. Defendants' policies and procedures required Plaintiff and other non-exempt
26 employees to don their protective gear prior to clocking in and remove their mandatory protective
27 gear after clocking out. Defendants used and continues to use a mandatory policy and procedure that
28 requires Plaintiff and other non-exempt employees to clock in at the beginning of their work shift and

1 clock out at the end of their work shift. Yet, Defendants maintained a policy and procedure that failed
2 to compensate Plaintiff and other non-exempt employees the legal minimum wage for the time it took
3 non-exempt employees to don and doff this mandatory protective equipment.

4 19. Defendants' policies and procedures also required the employees to don and doff their
5 protective gear during their meal breaks, which caused them to be owed additional minimum wages.
6 Defendants' policy and procedure resulted in daily-uncompensated time during which they were
7 performing tasks such as donning and doffing mandatory personal protection equipment and were
8 not paid a legal minimum wage. Defendants' policies and procedures resulted in a failure to pay legal
9 minimum wages to Plaintiff and other non-exempt employees in violation of Labor Code §§ 1194,
10 1197, and applicable Wage Orders. Defendants' policies and procedures also resulted in a failure to
11 pay overtime wages to Plaintiff and other non-exempt employees in violation of Labor Code §§ 510,
12 1194, 1197, and applicable Wage Orders.

13 20. Additionally, as stated above, because non-exempt employees had to don and doff their
14 mandatory protective equipment before and after clocking out for their thirty (30) minute meal breaks,
15 Plaintiff and other aggrieved employee's meal periods were often less than thirty (30) minutes.
16 Plaintiff and other non-exempt employees were denied 30-minute off-duty meal periods as mandated
17 by California law. Defendants provided Plaintiff and other non-exempt employees with exactly 30
18 minutes for meal periods, but the 30-minute period was inclusive of the time it took to don and doff
19 personal protective equipment, uniform, and associated waiting times at the end of the meal periods.
20 Additionally, Defendants failed to maintain any mechanism for the payment of meal period premium
21 payments as required by Labor Code § 226.7. As a result of Defendants' unlawful meal period
22 policies and practices, Plaintiff seeks to recover on behalf of himself and all non-exempt employees,
23 meal period premiums and penalties. Consequently, Defendants has violated Labor Code §§ 226.7,
24 512 and applicable Wage Orders. Defendants would also be liable for civil penalties pursuant to Labor
25 Code § 2698.

26 21. As a result, Plaintiff and other non-exempt employees would routinely need to spend
27 time donning protective gear prior to taking the full 30-minutes to be clocked in by the end of the 30-
28 minute period. The practical effect of Defendants' clock-in practices/procedures often resulted in

1 Plaintiff and other non-exempt employees staying on the premises and otherwise not exercising their
2 right to leave the facility, as doing so would further shorten the length of their meal periods.

3 22. Moreover, at all relevant times, Plaintiff and other non-exempt employees were not
4 properly paid at the correct overtime rate for all hours worked in excess of eight (8) hours per workday
5 and/or forty (40) hours per workweek. While Plaintiff and other non-exempt employees regularly
6 worked overtime hours, they were not compensated at one and one-half times their regular rate of
7 pay because Defendants failed to include all forms of compensation, including but not limited to,
8 non-discretionary bonuses and other forms of non-hourly compensation/renumeration, when
9 calculating the regular rate of pay used in overtime calculations.

10 23. For instance, although Defendants consistently paid its employees non-discretionary
11 incentive “nps bonuses,” Defendants omitted these payments when calculating the regular rate of pay
12 used in overtime calculations and when paying overtime to Plaintiff and the other non-exempt
13 employees.

14 24. Labor Code § 510 requires an employer to compensate an employee who works more
15 than eight (8) hours in one workday, forty (40) hours in a workweek, and for the first eight (8) hours
16 worked on the seventh consecutive day, no less than one and one-half times (1 1/2) the regular rate
17 of pay. In addition, Labor Code § 510 obligates employers to compensate employees at no less than
18 twice the regular rate of pay when an employee works more than twelve (12) hours in a workday or
19 more than eight (8) hours on the seventh consecutive day of work. Pursuant to Section 3 of the
20 applicable Wage Orders, non-exempt employees shall not be employed more than eight (8) hours in
21 any workday or more than 40 hours in any workweek unless the employee receives one and one-half
22 (1 1/2) times such employee’s regular rate of pay for all hours worked over 40 hours in the workweek.

23 25. By their policy of requiring Plaintiff and the other non-exempt employees to work in
24 excess of eight (8) hours in a workday and/or forty (40) hours in a workweek without compensating
25 them at the rate of one-half (1 1/2) their regular rate of pay, Defendants willfully violated the
26 provisions of Labor Code § 510 and the applicable Wage Orders.

27 26. Accordingly, to the extent permitted by law, Plaintiff and other non-exempt employees
28 are entitled to recover liquidated damages for violations of Labor Code § 1197.1. Based upon these

1 same factual allegations, Plaintiff and the other non-exempt employees are entitled to penalties under
2 Labor Code § 1199.

3 27. Furthermore, at all relevant times, Plaintiff and other non-exempt employees were not
4 provided with rest periods of at least ten (10) ten minutes for each four (4) hour work period, or major
5 fraction thereof due to Defendants' invalid rest period policies/practices that required non-exempt
6 employees remain on-premises during rest periods. Although Defendants claims to allow and permit
7 non-exempt employees to take rest periods, in practice, non-exempt employees were regularly unable
8 to take legally compliant rest periods due to Defendants' policy preventing employees from leaving
9 the premises. As such, Plaintiff and other non-exempt employees could not leave their jobsites to take
10 compliant rest periods. On other occasions, Plaintiff and other non-exempt employees are unable to
11 take duty-free rest breaks due to the demands of the job. Thus, Defendants prevented Plaintiff and
12 other non-exempt employees from taking timely and legally compliant rest periods. This also includes
13 failing to permit Plaintiff and other non-exempt employees from taking a third rest period for shifts
14 in excess of ten (10) hours in a workday.

15 28. Under the applicable Wage order, an employer must authorize and permit all employees
16 to take ten (10) minute duty free rest periods relieved of all duties for every major fraction of four
17 hours worked. This includes a third rest period for shifts in excess of 10.0 hours in a workday. See
18 *Augustus v. ABM Security Services, Inc.* (2016) 2 Cal. 5th 257, 269 [concluding that “during rest
19 periods employers must relieve employees of all duties and relinquish control over how employees
20 spend their time.”]. In *Augustus*, the court expressly rejected the employer's assertion that it could
21 provide an on-duty rest period to employees who worked as security guards and further explained
22 “that employers [must] relinquish any control over how employees spend their break time and relieve
23 their employees of all duties.” *Id.* at 273. Plaintiff and other non-exempt employees could not take
24 their rest periods “relinquished from all duties” as required by Labor Code § 226.7. Plaintiff and other
25 non-exempt employees worked in excess of ten (10) hours in a workday but were not permitted to
26 take an uninterrupted third rest period of ten (10) minutes. Additionally, Defendants also failed to
27 maintain any mechanism for the payment of rest period premium payments as required by Labor
28 Code § 226.7.

1 29. As a result of Defendants' unlawful rest period policies and practices, Plaintiff seeks
2 to recover on behalf of himself and all non-exempt employees rest period premiums and penalties.
3 Consequently, Defendants has violated Labor Code §§ 226.7, 512 and applicable Wage Orders.
4 Defendants would also be liable for civil penalties pursuant to Labor Code § 2698 et seq.

5 30. As a result of Defendants' failure to pay Plaintiff and other non-exempt employees for
6 all hours they were subject to the control of Defendants, and failure to pay for meal/rest period
7 premiums for missed/non-compliant meal and rest periods, Defendants issued wage statements which
8 failed to accurately identify the gross wages earned, the total hours worked, the net wages earned,
9 and the correct corresponding number of hours worked at each hourly rate, in violation of Labor Code
10 §226(a) (1, 2, 5, and 9).

11 31. Labor Code § 226.3 provides that "[a]ny employer who violates subdivision (a) of
12 Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per
13 employee per violation in an initial violation and one thousand dollars (\$1,000) per employee for
14 each violation in a subsequent citation, for which the employer fails to provide the employee a wage
15 deduction statement or fails to keep the required in subdivision (a) of Section 226."

16 32. Thus, for the violations of Labor Code section 226 described above, Plaintiff and other
17 non-exempt employees may also recover Labor Code § 226.3 penalties for Defendants' violations of
18 Labor Code § 226(a). As such, the wage statements Defendants issued to Plaintiff and other non-
19 exempt employees are in violation of Labor Code § 226 (a)(9). Thus, Defendants have violated Labor
20 Code §226(a)(9) with respect to Plaintiff and other non-exempt employees. Consequently, because
21 Defendants failed to comply with Labor Code § 226(a) and applicable Wage Orders, Plaintiff and
22 other non-exempt employees would be entitled to recover penalties under Labor Code §§ 226(e) and
23 2698 et seq.

24 33. Finally, because of, Defendants' failure to pay all minimum and overtime wages, and
25 meal and rest period premiums for non-compliant meal and rest periods, Defendants also failed and
26 continues to fail to pay other non-exempt employees all wages owed at their time of separation from
27 employment in violation of Labor Code §§ 201-203 and applicable Wage Orders. Thus, non-exempt
28 employees would be entitled to recover penalties under Labor Code §§ 201-203 and 2698 *et seq.*

1 **CLASS ACTION ALLEGATIONS**

2 34. Plaintiff brings this action on behalf of himself and the following Classes pursuant to
3 § 382 of the Code of Civil Procedure:

- 4 (1) All non-exempt employees who work or worked for Defendants in
5 California, during the four years immediately preceding the filing of the
6 Complaint through the date of trial. (“Class”)
- 7 (2) All non-exempt employees who worked for Defendants in California and
8 who worked overtime hours during at least one shift and earned a non-
9 discretionary bonus payment, during the four years immediately preceding
10 the filing of the Complaint through the date of trial. (“Overtime Reg Rate
11 Subclass”)
- 12 (3) All non-exempt employees who worked for Defendants in California, and
13 who have separated their employment with Defendants during one year
14 immediately preceding the filing of the Complaint through the date of trial.
15 (“Waiting Time Subclass”)
- 16 (4) All employees who work or worked for Defendants in California and who
17 received at least one wage statement, during the one year immediately
18 preceding the filing of the Complaint through the date of trial
19 (“Wage Statement Subclass”)
20 (collectively “the Classes”)

21 35. **Numerosity/Ascertainability:** The members of the Classes are so numerous that
22 joinder of all members would be unfeasible and not practicable. The membership of the Classes is
23 unknown to Plaintiff at this time; however, it is estimated that the Classes consist of at least one
24 hundred (100) individuals. The identity of such membership is readily ascertainable via inspection of
25 Defendants’ employment and payroll records.

26 36. **Common Questions of Law and Fact Predominate/Well Defined Community of**
27 **Interest:** There are common questions of law and fact as to Plaintiff and all other similarly situated
28 employees, which predominate over questions affecting only individual members including, without
limitation to:

1. Whether Defendants’ rounding timekeeping policies/practices resulted in a failure to
pay for all hours worked to the members of the Classes;

2. Whether Defendants' policies/practices of failing to pay minimum wages for time spent donning and doffing personal protective equipment ("PPE") resulted in a failure to pay for all hours worked to the members of the Classes;

3. Whether Defendants' payroll policies/practices resulted in a failure to pay overtime at the appropriate premium rate resulted to members of the Overtime Subclass;

3. Whether Defendants provided legally compliant meal and rest periods or compensation in lieu thereof to members of the Classes;

4. Whether Defendants furnished legally compliant wage statements to members of the Wage Statement Subclass pursuant to Labor Code § 226(a); and

5. Whether the timing and amount of payment of final wages to members of the Waiting Time Subclass at the time of separation from employment were unlawful.

37. **Predominance of Common Questions:** Common questions of law and fact predominate over questions that affect only individual members of the Classes. The common questions of law set forth above are numerous and substantial and stem from Defendants' policies and/or practices applicable to each individual class member, such as Defendants' uniform rounding policy/practice, uniform policy/practice of failing to pay for time spent donning and doffing personal protective equipment ("PPE"), policy/practice of failing to account for non-discretionary bonus payments in calculating employees' regular rate for overtime purposes, Defendants' uniform policy of failing to provide compliant meal and rest periods, and Defendants' resulting failure to provide accurate itemized wage statements, and to pay for all wages due upon separation of employment. As such, the common questions predominate over individual questions concerning each individual class member's showing as to his or her eligibility for recovery or as to the amount of his or her damages.

38. **Typicality:** The claims of Plaintiff are typical of the claims of the Classes because Plaintiff was employed by Defendants as a non-exempt employee in California during the statute(s) of limitation applicable to each cause of action pled in the Complaint in this action. As alleged herein, Plaintiff, like the members of the Classes was deprived of minimum and overtime wages, was deprived of meal and rest period premium wages, was subject to Defendants' uniform meal and rest period policies/practices, was not provided accurate itemized wage statements, and was not paid all

1 wages owed at the time of her separation of employment.

2 39. **Adequacy of Representation:** Plaintiff is fully prepared to take all necessary steps to
3 represent fairly and adequately the interests of the members of the Classes. Moreover, Plaintiff's
4 attorneys are ready, willing and able to fully and adequately represent the members of the Classes.
5 Plaintiff's attorneys have prosecuted and are actively litigating several wage-and-hour class actions
6 in state and federal courts and are committed to vigorously prosecuting this action on behalf of the
7 members of the Classes.

8 40. **Superiority:** The California Labor Code is broadly remedial in nature and serves an
9 important public interest in establishing minimum working conditions and standards in California.
10 These laws and labor standards protect the average working employee from exploitation by
11 employers who have the responsibility to follow the laws and who may seek to take advantage of
12 superior economic and bargaining power in setting onerous terms and conditions of employment. The
13 nature of this action and the format of laws available to Plaintiff and members of the Classes make
14 the class action format a particularly efficient and appropriate procedure to redress the violations
15 alleged herein. If each employee were required to file an individual lawsuit, Defendants would
16 necessarily gain an unconscionable advantage since they would be able to exploit and overwhelm the
17 limited resources of each individual plaintiff with their vastly superior financial and legal resources.

18 41. Moreover, requiring each member of the Classes to pursue an individual remedy would
19 also discourage the assertion of lawful claims by employees who would be disinclined to file an action
20 against their former and/or current employer for real and justifiable fear of retaliation and permanent
21 damages to their careers at subsequent employment. Further, the prosecution of separate actions by
22 the individual class members, even if possible, would create a substantial risk of inconsistent or
23 varying verdicts or adjudications with respect to the individual class members against Defendants
24 herein; and which would establish potentially incompatible standards of conduct for Defendants;
25 and/or legal determinations with respect to individual class members which would, as a practical
26 matter, be dispositive of the interest of the other class members not parties to adjudications or which
27 would substantially impair or impede the ability of the class members to protect their interests.
28 Further, the claims of the individual members of the class are not sufficiently large to warrant

1 vigorous individual prosecution considering all of the concomitant costs and expenses attending
2 thereto. As such, the Classes identified in Paragraph 27 are maintainable as Classes under § 382 of
3 the Code of Civil Procedure.

4 **FIRST CAUSE OF ACTION**

5 **MINIMUM WAGE VIOLATIONS**

6 **(AGAINST ALL DEFENDANTS)**

7 42. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

8 43. Section 4 of the applicable Wage Orders and California Labor Code §§ 1197 and
9 1182.12 establish the right of employees to be paid minimum wages for all hours worked, in amounts
10 set by state law. Labor Code §§ 1194(a) and 1194.2(a) provide that an employee who has not been
11 paid the legal minimum wage as required by Labor Code § 1197 may recover the unpaid balance
12 together with attorneys' fees and costs of suit, as well as liquidated damages in an amount equal to
13 the unpaid wages and interest accrued thereon.

14 44. At all relevant times herein, Defendants failed to conform their pay practices to the
15 requirements of the law. This unlawful conduct includes but is not limited to Defendants' uniform
16 and unlawful practice of failing to pay for all off-the clock work by requiring Plaintiff and other non-
17 exempt employees to don and doff protective gear ("PPE") prior to clocking in, which resulted in
18 these individuals not being paid for all hours worked. Accordingly, Plaintiff and members of the
19 Classes were not compensated for all hours worked including, but not limited to, all hours they were
20 subject to the control of Defendants and/or suffered or permitted to work under the California Labor
21 Code and applicable Wage Orders.

22 45. Labor Code § 1198 makes unlawful the employment of an employee under conditions
23 that the IWC prohibits. California Labor Code §§ 1194(a) and 1194.2(a) provide that an employer
24 who has failed to pay its employees the legal minimum wage is liable to pay those employees the
25 unpaid balance of the unpaid wages as well as liquidated damages in an amount equal to the wages
26 due and interest thereon.

27 46. As a direct and proximate result of Defendants' unlawful conduct as alleged herein,
28 Plaintiff and the Classes have sustained economic damages, including but not limited to unpaid wages

1 and lost interest, in an amount to be established at trial, and they are entitled to recover economic and
2 statutory damages and penalties and other appropriate relief as a result of Defendants' violations of
3 the California Labor Code and applicable Wage Orders.

4 47. Defendants' practice and uniform administration of corporate policy regarding illegal
5 employee compensation is unlawful and creates an entitlement to recovery by Plaintiff and members
6 of the Classes in a civil action for the unpaid amount of minimum wages, liquidated damages,
7 including interest thereon, statutory penalties, attorney's fees, and costs of suit according to Labor
8 Code §§ 204, 558, 1194 *et seq.*, 1197, 1198, and Code of Civil Procedure § 1021.5.

9 **SECOND CAUSE OF ACTION**

10 **FAILURE TO PAY ALL OVERTIME WAGES**

11 **(AGAINST ALL DEFENDANTS)**

12 48. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

13 49. This cause of action is brought pursuant to Labor Code §§ 204, 510, 558, 1194, and
14 1198, which provide that non-exempt employees are entitled to overtime wages for all overtime hours
15 worked and provide a private right of action for the failure to pay all overtime compensation for
16 overtime work performed.

17 50. At all times relevant herein, Defendants were required to properly pay Plaintiff and
18 members of the Classes and Overtime Subclass for all overtime hours worked pursuant to California
19 Labor Code § 1194 and the applicable Wage Orders.

20 51. Section 3 of the applicable Wage Order requires an employer to pay an employee "one
21 and one- times the employee's regular rate of pay" for work in excess of 8 hours per
22 workday and/or in excess of 40 hours of work in the workweek. The same section also requires an
23 employer to pay an employee double the employee's regular rate of pay for work in excess of twelve
24 hours each workday and/or for work in excess of 8 hours on the seventh consecutive day of work in
25 the workweek. Defendants caused Plaintiff to work overtime and hours but did not compensate
26 Plaintiff or members of the Classes at one and one-half times their regular rate of pay for such hours.

27 52. Defendants failed to conform their pay practices to the requirements of the law. This
28 unlawful conduct includes but is not limited to Defendants' uniform and unlawful policy/practice of

1 rounding time as well as failing to account for non-discretionary bonuses in calculating the regular
2 rate for calculating members of the Classes and Overtime Subclass overtime rate which resulted in
3 these individuals not being paid all overtime wages owed.

4 53. The foregoing policies and practices are unlawful and create entitlement to recovery by
5 Plaintiff and the members of the Classes and Overtime Subclass in a civil action for the unpaid amount
6 of overtime wages, including interest thereon, statutory penalties, attorney's fees, and costs of suit
7 according to Labor Code §§ 204, 210, 510, 1194, and 1198, the applicable Wage Orders, and Code
8 of Civil Procedure § 1021.5.

9 **THIRD CAUSE OF ACTION**

10 **MEAL PERIOD VIOLATIONS**

11 **(AGAINST ALL DEFENDANTS)**

12 54. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

13 55. Plaintiff is informed and believes, and based thereon alleges, that Defendants failed in
14 their affirmative obligation to provide all of their hourly non-exempt employees, including Plaintiff
15 and members of the Classes, with all required meal periods in accordance with the mandates of the
16 California Labor Code and applicable Wage Orders, for the reasons set forth in the Common
17 Allegations section of this Complaint.

18 56. As a result, Defendants are responsible for paying premium compensation for meal
19 period violations, including interest thereon, statutory penalties, and costs of suit pursuant to the
20 applicable Wage Orders, Labor Code §§ 226.7, 512, and Civil Code §§ 3287(b) and 3289.

21 **FOURTH CAUSE OF ACTION**

22 **REST PERIOD VIOLATIONS**

23 **(AGAINST ALL DEFENDANTS)**

24 57. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

25 58. Section 12 of the applicable Wage Orders and Labor Code §§ 226.7 and 516 establish
26 the right of non-exempt employees to be provided with a rest period of at least ten (10) minutes for
27 each four (4) hour period worked, or major fraction thereof.

59. Due to their unlawful rest period policy and practices, Defendants did not authorize and permit Plaintiff and members of the Classes to take any rest periods to which they were legally entitled. Despite Defendants' violations, Defendants have not paid an additional hour of pay to Plaintiff and members of the Classes at their respective regular rates of pay for each violation, in accordance with California Labor Code § 226.7.

60. The foregoing violations create an entitlement to recovery by Plaintiff and members of the Classes in a civil action for the unpaid amount of rest period premiums owing, including interest thereon, statutory penalties, and costs of suit pursuant to the applicable Wage Orders, Labor Code §§ 226.7 and 516, and Civil Code §§ 3287(b) and 3289.

FIFTH CAUSE OF ACTION

FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS

(AGAINST ALL DEFENDANTS)

61. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

62. Labor Code 226(a) states in pertinent part the following:

“(a) An employer, semimonthly or at the time of each payment of wages, shall furnish to his or her employee, either as a detachable part of the check, draft, or voucher paying the employee’s wages, or separately if wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, except as provided in subdivision (j), (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. . .”

63. As set forth above, during the Class Period, Defendants issued and continues to issue wage statements to its employees including Plaintiff and members of the Wage Statement Penalty

1 Subclass, which are inadequate under Labor Code Section 226(a).

2 64. As a result of Defendants failure to pay Plaintiff and the Classes for all overtime wages
3 at the appropriate legal rate, and missed meal and rest period premiums, Defendants failed to include
4 required information on Plaintiff and the Classes' wage statements, including, but not limited to, the
5 gross wages earned, the net wages earned in violation of Labor Code section 226a. Additionally,
6 Defendants wage statements issued failed to state the name and address of the legal entity that is the
7 employer in violation Labor Code Section 226(a)(8).

8 65. Defendants' failure to comply with section 226(a) of the Labor Code was knowing
9 and intentional.

10 66. As a result of Defendants' issuance of inaccurate itemized wage statements to Plaintiff
11 and members of the Wage Statement Subclass in violation of section 226(a) of the California Labor
12 Code, Plaintiff and members of the Wage Statement Subclass are each entitled to recover an initial
13 penalty of \$50, and subsequent penalties of \$100, up to an amount not exceeding an aggregate penalty
14 of \$4,000 per Plaintiff and per every member of the Wage Statement Subclass from Defendants
15 pursuant to section 226(e) of the Labor Code, costs and reasonable attorneys' fees.

16 **SIXTH CAUSE OF ACTION**

17 **WAITING TIME PENALTIES**

18 **(AGAINST ALL DEFENDANTS)**

19 67. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

20 68. The actionable period for this cause of action is three years prior to the filing of this
21 Complaint through the present, and on-going until the violations are corrected or the class is certified.

22 69. Labor Code §§ 201 and 202 require Defendants to pay all compensation due and owing
23 to Plaintiff and the Waiting Time Class during the actionable period for this cause of action at or
24 around the time that their employment is or was terminated or ended.

25 70. Labor Code § 203 provides that if an employer willfully fails to pay compensation
26 promptly upon discharge or resignation, as required by Labor Code sections 201 and 202, then the
27 employer is liable for penalties in the form of continued compensation up to thirty (30) workdays.

71. Defendants willfully failed to pay Plaintiff and the Waiting Time Subclass for all hours worked, including all minimum and overtime wages, and their meal and rest period premiums, prior to or upon termination or separation from employment with Defendants as required by Labor Code §§ 201 and 202.

72. As a result, Defendants are liable to Plaintiff and the Waiting Time Subclass for waiting time penalties amounting to thirty (30) days wages for Plaintiff and the Waiting Time Subclass pursuant to Labor Code § 203. *See, e.g.,* DLSE Manual, 4.3.4 (Failure to pay any sort of wages due upon termination entitles an employee to recover waiting time penalties).

SEVENTH CAUSE OF ACTION

UNFAIR COMPETITION

(AGAINST ALL DEFENDANTS)

73. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

74. Defendants have engaged and continue to engage in unfair and/or unlawful business practices in California in violation of California Business and Professions Code § 17200 *et seq.*, by failing to pay all minimum and overtime wages at the legal rate, by failing to provide all legally required meal and rest periods or pay premium payments in lieu thereof, by failing to provide accurate wage statements, and by failing to pay all earned wages at the time of separation from employment.

75. Defendants' utilization of these unfair and/or unlawful business practices deprived Plaintiff and continues to deprive members of the Classes of compensation to which they are legally entitled, constitutes unfair and/or unlawful competition, and provides an unfair advantage over Defendants' competitors who have been and/or are currently employing workers and attempting to do so in honest compliance with applicable wage and hour laws.

76. Because Plaintiff is a victim of Defendants' unfair and/or unlawful conduct alleged herein, Plaintiff for himself and on behalf of the members of the Classes, seeks full restitution of monies, as necessary and according to proof, to restore any and all monies withheld, acquired and/or converted by Defendants pursuant to Business and Professions Code §§ 17203 and 17208.

77. The acts complained of herein occurred within the last four years immediately preceding the filing of the Complaint in this action.

1 78. Plaintiff was compelled to retain the services of counsel to file this court action to
2 protect his interests and those of the Classes, to obtain restitution and injunctive relief on behalf of
3 Defendants' current hourly non-exempt employees and to enforce important rights affecting the
4 public interest. Plaintiff has thereby incurred the financial burden of attorneys' fees and costs, which
5 he is entitled to recover under Code of Civil Procedure § 1021.5.

6 **EIGHTH CAUSE OF ACTION**
7 **PRIVATE ATTORNEYS GENERAL ACT**
8 **(AGAINST ALL DEFENDANTS)**

9 79. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

10 80. Defendants have committed several Labor Code violations against Plaintiff and other
11 similarly non-exempt employees. Plaintiff, an "aggrieved employee" within the meaning of Labor
12 Code § 2698 *et seq.*, acting on behalf of himself and other non-exempt employees, brings this
13 representative action against Defendants to recover the civil penalties due to Plaintiff, other similarly
14 non-exempt employees, and the State of California according to proof pursuant to Labor Code § 2699
15 (a) and (f) including, but not limited to (1) \$100 for each initial violation and (2) \$200 for each
16 subsequent violation per employee per pay period for those violations of the Labor Code for which
17 no civil penalty is specifically provided based on the following Labor Code violations:

18 a. Failing to pay Plaintiff and other non-exempt employees for all hours worked,
19 including all minimum and overtime wages in violation of Labor Code §§ 204, 510, 1194, 1197,
20 1198, and 1182.12;

21 b. Failing to pay Plaintiff and other non-exempt employees overtime wages at the
22 "regular rate of pay", including all forms of non-hourly compensation, in violation of Labor Code §§
23 204, 510, 558, 1194, and 1198;

24 c. Failing to provide Plaintiff and other non-exempt employees with all of their
25 statutorily mandated meal periods or compensation at the "regular rate of pay" in lieu thereof in
26 violation of Labor Code §§ 204, 510, 558, 1194 and 1198;

27
28 d. Failing to authorize and permit Plaintiff and other non-exempt employees with all of

1 their statutorily mandated rest periods or compensation at the “regular rate of pay” in lieu thereof in
2 violation of Labor Code §§ 226.7, and 516;

3 e. Failing to furnish Plaintiff and other similarly situated employees with complete,
4 accurate, itemized wage statements in violations of Labor Code § 226(a)(1), (5), and (9); and

5 f. Failing to timely compensate Plaintiff and similarly non-exempt employees with all
6 earnings at their separation of employment in violation of Labor Code §§ 201-203.

7 81. On or about July 16, 2021, Plaintiff notified Defendant Bunge Oils, Inc. via certified
8 U.S. Mail, and the California Labor and Workforce Development Agency (“LWDA”) via its website
9 of Defendant’s violations of the California Labor Code § 2698 *et seq.*, with respect to violations of
10 the California Labor Code identified in Paragraph 80 (a)-(f). Now that sixty-five days have passed
11 from Plaintiff notifying Defendant of these violations, Plaintiff will have exhausted his administrative
12 requirements for bringing a claim under the Private Attorneys General Act with respect to these
13 violations.

14 82. Plaintiff was compelled to retain the services of counsel to file this court action to
15 protect his interests and the interests of similarly non-exempt employees, and to assess and collect
16 the civil penalties owed by Defendants. Plaintiff has hereby incurred attorneys’ fees and costs, which
17 he is entitled to receive under California Labor Code § 2699.

18 **PRAYER FOR RELIEF**

19 **WHEREFORE**, Plaintiff prays for judgment for himself and for all others on whose behalf
20 this suit is brought against Defendants, as follows:

- 21 1. For an order certifying the proposed Classes;
- 22 2. For an order appointing Plaintiff as representative of the Classes;
- 23 3. For an order appointing Counsel for Plaintiff as Counsel for the Classes;
- 24 4. Upon the First Cause of Action, for compensatory, consequential, general and special
25 damages according to proof pursuant to Labor Code §§ 204, 210, 510, and 1194;
- 26 5. Upon the Second Cause of Action, for compensatory, consequential, general and
27 special damages according to proof pursuant to Labor Code §§ 204, 210, 510, 1194, and 1198;

1 6. Upon the Third Cause of Action, for compensatory, consequential, general and special
2 damages according to proof pursuant to Labor Code §§ 226.7 and 512;

3 7. Upon the Fourth Cause of Action, for compensatory, consequential, general and
4 special damages according to proof pursuant to Labor Code §§ 226.7 and 516;

5 8. Upon the Fifth Cause of Action, penalties pursuant to Labor Code § 226(a), and
6 reasonable costs and attorneys' fees;

7 9. Upon the Sixth Cause of Action, for statutory waiting time penalties pursuant to Labor
8 Code §§ 201-203.

9 10. Upon the Seventh Cause of Action, for restitution to Plaintiff and members of the
10 Classes of all money and/or property unlawfully acquired by Defendants by means of any acts or
11 practices declared by this Court to be in violation of Business and Professions Code § 17200 *et seq.*;

12 11. Upon the Eighth Cause of Action, for civil penalties due to Plaintiff, other non-exempt
13 aggrieved employees, and the State of California according to proof pursuant to Labor Code § 2699
14 (a) and (f), including, but not limited to (1) \$100.00 for each initial violation and (2) \$200 for each
15 subsequent violation per employee per pay period for those violations of the Labor Code for which
16 no civil penalty is specifically provided;

17 12. Prejudgment interest on all due and unpaid wages pursuant to California Labor Code
18 § 218.6 and Civil Code §§ 3287 and 3289;

19 13. On all causes of action, for attorneys' fees and costs as provided by Labor Code §§
20 218.5, 226, and Code of Civil Procedure § 1021.5; and

21 14. For such other relief that the Court may deem just and proper.

22 Dated: November 4, 2021

FALAKASSA LAW, P.C.
BOKHOUR LAW GROUP, P.C.

23
24
25 By: _____

Joshua Falakassa, Esq.
Mehrdad Bokhour, Esq.
Attorneys for Plaintiff Ramiro Guevara and the
Putative Classes

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen years and not a party to the within action; my business address is 1901 Avenue of the Stars, Suite 450, Los Angeles, California 90067.

On November 23, 2021, I served the following document(s) described as **FIRST AMENDED CLASS AND PAGA ACTION COMPLAINT** on the interested parties in this action by placing true copies thereof enclosed in sealed envelopes addressed as follows:

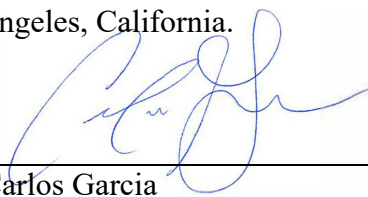
Christopher W. Decker, Esq.
Christopher.decker@ogletree.com
OGLETREE, DEAKINS, NASH, SMOAK
& STEWART, P.C.
400 South Hope Street, Suite 1200
Los Angeles, California 90071

Counsel for defendant Bunge Oils, Inc.

BY ELECTRONIC MAIL: Based on a Court order or an agreement by the parties to accept service by e-mail or electronic transmission, I caused such the document(s) described above to be sent from my email address to the persons listed above. I did not receive, within a reasonable time after the transmission, any electronic message or indication that the transmission was unsuccessful.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on November 23, 2021, at Los Angeles, California.



Carlos Garcia