

OFFICIAL RECEIPT

SUPERIOR COURT OF CALIFORNIA -
COUNTY OF SAN BERNARDINO
San Bernardino District - Civil Division
247 West Third Street
San Bernardino, CA 92415-0210

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Receipt No. **SC-2021-67895**
Transaction Date 11/30/2021
Payor
Barboza Gomez, Laura Lizeth

Description	Amount Paid
Barboza Gomez, Laura Lizeth CIVSB2129090 ***PAGA***Barboza Gomez -v- Rudolph Foods Company, Inc. et al	
Complex Case Fee - Pla	1,000.00
SUBTOTAL	1,000.00
Remaining Balance Due:	0.00

PAYMENT TOTAL 1,000.00

Check (Ref #15915/15916)	1,000.00
Tendered	
Total Tendered	1,000.00
Change	0.00

11/30/2021	Cashier V.Gonzalez	Audit
09:11 AM	Station SJVC101-C	52886923

OFFICIAL RECEIPT**OFFICIAL RECEIPT**

SUPERIOR COURT OF CALIFORNIA -
COUNTY OF SAN BERNARDINO
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247 West Third Street
San Bernardino, CA 92415-0210

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Receipt No. **SC-2021-67036**
Transaction Date 11/22/2021
Payor
Bosco Legal Services4651 Brookhol

Description	Amount Paid
Barboza Gomez, Laura Lizeth CIVSB2129090 ***PAGA***Barboza Gomez -v- Rudolph Foods Company, Inc. et al	
Unlimited Civil - Complai	435.00
SUBTOTAL	435.00
Remaining Balance Due:	0.00

PAYMENT TOTAL 435.00

Check (Ref #15470)	435.00
Tendered	
Total Tendered	435.00
Change	0.00

11/22/2021	Cashier NCartwigh	Audit
11:26 AM	Station SJVC352-C	52866015

OFFICIAL RECEIPT

SUMMONS (CITACION JUDICIAL)

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

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

NOV 22 2021

BY 
NICOLE CARTWRIGHT, DEPUTY

**NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):**

Rudolph Foods Company, Inc., an Ohio Corporation and DOES 1-50, inclusive,

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

Laura Lizeth Barboza Gomez, on behalf of herself, all aggrieved employees, and the State of CA as a Private Attorneys General,

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): Superior Court of California

County of San Bernardino, Civil Division
247 West Third Street, San Bernardino, CA 92415

CASE NUMBER:
(Número del caso)

CIV SB 2129090

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):

Nazo Koulloukian, SBN 263809, 3435 Wilshire Blvd., Ste. 1710, Los Angeles, CA 90010, Tel:(213) 761-5484

DATE:

(Fecha)

NOV 22 2021

Clerk, by

(Secretario)

Nicole Cartwright

, 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)).

[SEAL]

Copy

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):

ORIGINAL

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

OCT 12 2021

BY 
NICOLE CARTWRIGHT, DEPUTY

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12 Tarzana, CA 91356
13 Telephone: (818) 609-0807
14 Facsimile: (818) 609-0892

15 Attorneys for Plaintiff:
16 Laura Lizeth Barboza Gomez, on behalf of
17 herself, all aggrieved employees, and the State
18 of California as a Private Attorneys General

19
20 SUPERIOR COURT OF THE STATE OF CALIFORNIA
21 SAN BERNARDINO COUNTY

22 Laura Lizeth Barboza Gomez, on behalf of
23 herself, all aggrieved employees, and the
24 State of CA as a Private Attorneys General,

Case No.:

CIV SB 2129090

25 Plaintiffs,

REPRESENTATIVE ACTION

26 vs.

27 Rudolph Foods Company, Inc., an Ohio
28 Corporation and DOES 1-50, inclusive,

Violation of the Private Attorneys
General Act of 2004, Cal. Labor Code
§2698 et seq.

Defendants.

FILED BY FAX

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10 Attorneys for Plaintiff

11 Laura Lizeth Barboza Gomez, on behalf of
12 herself, all aggrieved employees, and the State
of California as a Private Attorneys General

13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

14 **SAN BERNARDINO COUNTY**

16 Laura Lizeth Barboza Gomez, on behalf of) Case No.:
17 herself, all aggrieved employees, and the)
State of CA as a Private Attorneys General,)

18 Plaintiffs,

19 vs.

REPRESENTATIVE ACTION

20 Rudolph Foods Company, Inc., an Ohio
21 Corporation and DOES 1-50, inclusive,

**Violation of the Private Attorneys
General Act of 2004, Cal. Labor Code
§2698 et seq.**

22 Defendants.
23
24
25

1 Plaintiff Laura Lizeth Barboza Gomez brings this PAGA representative action
2 complaint on behalf of themselves, all aggrieved employees, and the State of California as a
3 Private Attorneys General, and alleges as follows:

4 **NATURE OF THE ACTION**

5
6 1. Plaintiff Laura Lizeth Barboza Gomez worked for Defendants Rudolph Foods
7 Company, Inc., an Ohio Corporation, and Does 1-50 (collectively “Defendants” or
8 “Employer”) until June of 2021. Plaintiff brings this action pursuant to the Private
9 Attorneys General Act of 2004 (“PAGA”), Cal. Labor Code §2698 *et seq.*, on a
10 representative basis. All current and former employees of Defendants within one year of
11 serving notice on the LWDA to the present are aggrieved employees.

12 2. Defendants failed to comply with California Labor Code requirements due to
13 erroneous, willful, and intentional employment practices and policies. Plaintiff brings this
14 representative action on behalf of themselves, all others similarly situated aggrieved
15 employees, and the State of California, based upon the claims articulated below. Plaintiff
16 provided notice of their claims pursuant to §2698 *et. seq.*, to the Labor and Workforce and
17 Development Agency (“LWDA”), as illustrated by the attached Exhibit. The LWDA has
18 not provided any notice to Plaintiff following the exhaustion of the 65-day notice period
19 required by 2699.3(a)(2)(B). Accordingly, Plaintiff now brings this Complaint for civil
20 penalties under the Private Attorneys General Act (“PAGA”), Labor Code §2698 *et seq.*

21 3. Defendants have had a consistent policy and/or practice of: (1) failing to pay for
22 all hours worked, including overtime hours worked; (2) failing to pay minimum wage; (3)
23 failing to provide timely meal breaks; (4) failing to provide rest breaks; (5) failing to
24 provide proper cool-down rest periods; (6) failing to provide safe working conditions; (7)
25 failing to provide a place of employment that is safe and healthful; (8) failing to provide
26 suitable seating; (9) failing to reimburse for required business expenses; (10) and failing
27 to provide accurate wage statements and maintain accurate payroll records. Defendants
28 are therefore liable for civil penalties under the Cal. Labor Code, including the Private

1 Attorney General Act (“PAGA”), Labor Code §2698 *et seq.*, as described more fully
2 herein.

3 4. Defendants have violated, and/or has caused to be violated, several Labor Code
4 provisions, and it is therefore liable for civil penalties under Cal. Labor Code §2698 *et*
5 *seq.* We request that your agency investigate the claims alleged below or permit Plaintiff
6 to seek civil penalties under the Private Attorney General Act (“PAGA”), Labor Code
7 §2698 *et seq.*, on behalf of the Labor and Workforce and development Agency (“LWDA”)
8 and the State of California in a representative action. This letter will serve as notice of
9 these allegations pursuant to Cal. Lab. Code §2699.3.

10 THE PARTIES

11 5. Plaintiff Laura Lizeth Barboza Gomez is a resident of the State of California and was
12 employed as an hourly, nonexempt employee of Defendants until June 29, 2021.

13 6. Defendant Rudolph Foods Company, Inc. is an Ohio Corporation doing business in
14 California with the capacity to sue and to be sued and doing business, in San Bernardino
15 County, State of California.

16 7. Plaintiff is unaware of the true names, capacities, relationships, and extent of
17 participation in the conduct alleged herein, of the Defendants sued as DOES 1 through 50,
18 but is informed and believes and thereon alleges that said Defendants are legally
19 responsible for the wrongful conduct alleged herein and therefore sues these Defendants
20 by such fictitious names, Plaintiffs will amend this complaint when their true names and
21 capabilities are ascertained.

22 8. Plaintiff is informed and believes and thereon alleges that each Defendant, directly
23 or indirectly, or through agents or other persons, employed Plaintiff and other aggrieved
24 employees of the representative class, and exercised control over their wages, hours, and
25 working conditions. Plaintiff is informed and believes and thereon allege that each
26 Defendant acted in all respects pertinent to this action as the agent of the other Defendants,
27 carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the
28 acts of each Defendants are legally attributable to the other Defendants.

JURISDICTION AND VENUE

9. Venue is proper in this judicial district because Defendants conduct business in this county, and each defendant has legal obligations to Plaintiff and many of the aggrieved employees in this case that arose in this county.

10. The statutory penalties sought by Plaintiff exceeds the minimum jurisdictional limits of the Superior Court and will be established according to proof at trial. Based on information, investigation, and analysis, Plaintiff alleges that the amount in controversy, including claims for monetary damages, penalties, and attorney's fees, is more than twenty-five thousand dollars (\$25,000).

11. The California Superior Court has jurisdiction in this matter because Plaintiff is a resident of California, and Defendants are incorporated in and/or qualified to do business in California and regularly conduct business in California. Further, there is no federal question at issue as the claims herein are based solely on California law.

PAGA REPRESENTATIVE ACTION ALLEGATIONS

12. During the relevant period, Defendants committed various violations of the California Labor Code as alleged below in more detail. Defendants enforce multiple policies that violate state law, which is intended to increase profits to the detriment of aggrieved employees.

13. Plaintiff is an aggrieved employee of Defendants, having worked for Defendants in a food packing warehouse from February until June 29 of 2021.

14. For at least one (1) year prior to the date of service notice on the LWDA, and continuing to the present, Defendants engaged in unlawful employment practices that resulted in violations of numerous Labor Code sections, as set forth more fully below.

15. Plaintiff and all current and former employees within one year of filing this action to the present are aggrieved employees within the meaning of Labor Code 2699, *et seq.* (See Labor code §2699(c).)

16. Defendants, and each of them, have committed the following violations of the California Labor Code:

1 **Failure to Pay for All Hours Worked, Including Overtime Hours Worked**
2 **(Cal. Labor Code §§218, 510, 558, 1194, 1197, 1198, 1199, 2698 et seq.)**

3 17. Plaintiff reasserts and alleges all preceding paragraphs as if fully set forth and
4 incorporate said paragraphs herein by reference.

5 18. Section 2(G) of Wage Order 1 defines “hours worked” as “the time during which
6 an employee is subject to the control of an employer and including all the time the
7 employee is suffered or permitted to work, whether or not required to do so.” When
8 employees like Plaintiff and her coworkers earning at or near minimum wage do not
9 receive payment for all hours worked as a result of unlawful employment practices,
10 including being forced to wait in line for temperature checks prior to clocking in,
11 answering a required health questionnaire from their phone prior to clocking in and being
12 required to put on and take off a work uniform while off the clock, the result is that they
13 are earning less than the statutory minimum wages for all hours worked. Employer has
14 been engaged in many unlawful employment practices which resulted in underpayment
15 for hours worked each pay period, including overtime hours worked, as more fully set
16 forth below. Employer has also failed to pay the required minimum wage for all hours
17 worked and has failed to pay all wages owed twice per month.

18 19. Off-the-Clock Hours Worked- Waiting in Required Lines. Plaintiff and aggrieved
19 employees frequently worked off the clock and were routinely subjected to periods
20 wherein they were under the Employer’s control but not compensated for their time.
21 Plaintiff and aggrieved employees were required to perform several required duties off the
22 clock. Employees were required to wait in lines to clock in for work because there was
23 only one machine to do so, taking up to 2 minutes of their time for which they were under
24 Employer’s control but were paid nothing. Employees were also required to participate
25 in mandatory temperature checks prior to clocking into work. This time spent waiting in
26 these required lines was required by Employer and was essential and required before
27 employees could begin and/or resume working on the clock. Plaintiff and aggrieved
28 employees were also required to answer a series of COVID related questions on their

1 personal cell phones, during their personal time prior to clocking in for work. Finally,
2 Plaintiff and aggrieved employees were also required to put on and take off a work
3 uniform, for which they were paid zero for their dress/undress time. Employer has
4 violated Labor Code §§510 1194, 1198, 1199 and Wage Order 1. Employer is liable for
5 civil penalties pursuant to Labor Code §§558 and 2698 *et seq.*

6 20. Failure to Include Bonus Pay in Regular Rate of Pay for Calculating Overtime.
7 Pursuant to Labor Code §200(a) “‘Wages’ includes all amounts for labor performed by
8 employees of every description, whether the amount is fixed or ascertained by the standard
9 of time, task, piece, commission basis, or other method of calculation.” Employer fails to
10 include nondiscretionary bonuses into the regular rate of pay for purposes of calculating
11 overtime.

12 21. *Bonuses.* It is well established that non-discretionary bonuses retroactively
13 increase the employee’s “regular rate” of pay for purposes of calculating overtime. (Labor
14 Code §207) The “regular rate” is calculated by dividing the hours worked in a week by all
15 the compensation earned for that week. When an employee is later paid a bonus that is
16 partly due to work performed in that week, this additional pay must be added into the total
17 compensation for the week, increasing the employee’s regular rate of pay. (*Marin v.*
18 *Costco Wholesale Corp.* (2008) 169 CA4th 804, 807.)

19 22. Employer has failed to properly calculate and pay overtime compensation, making
20 no adjustment to overtime rates reflected in any of Plaintiff or aggrieved employees’
21 paystubs. Plaintiff and other employees have been denied “the unpaid balance of the full
22 amount of this... overtime compensation” as required by Cal. Labor Code. §1194.
23 Additionally, Employer has violated Cal. Labor Code §218 and §510 and applicable
24 Industrial Welfare Commission Wage Orders at sections (3)(A)(1) for failure to pay
25 overtime, as well as §1198 which makes it a violation of the labor code to fail to comply
26 with a wage order.

27 23. Work Performed During Unpaid Meal Periods. As more fully set forth below,
28 Employer failed to permit Plaintiff and others to take timely, off-duty, meal breaks of “not

1 less than 30 minutes” for each five consecutive hours of work in violation of Labor Code
2 §§226.7 and 512. Plaintiff and aggrieved employees have been employed under conditions
3 prohibited by the wage order, and thus Employer has also violated §§1198 and 1199.
4 Employer is liable for civil penalties pursuant to Labor Code §§558 and 2699 *et seq.*

5 24. Failure to Pay All Wages Owed Twice Per Month. Employer was required to pay
6 Plaintiffs and employee all wages earned twice during each calendar month pursuant to
7 Labor Code §204(a). Employer failed to pay all wages earned to employees as a result of
8 the unlawful employment policies and practices discussed herein. As a result of these
9 practices, Employees were underpaid for hours worked, including penalty wages, and this
10 underpayment resulted in a failure to pay all wages owed twice per month.

11 **Failure to Pay Minimum Wage**

12 **(Cal. Labor Code §§ 200, 218.5, 226, 558, 1194, 1194.2, 1197, 1197.2, 1198, 1199,**
13 **2698 et seq.)**

14 25. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
15 incorporate said paragraphs herein by reference.

16 26. Pursuant to Labor Code sections 1194, 1194.2 and 1197, it is unlawful for an
17 employer to suffer or permit a California employee to work without paying wages at the
18 proper minimum wage for all time worked as required by the applicable IWC Wage Order.

19 27. Employer failed to pay Plaintiff and aggrieved employees for all hours worked as
20 a result of Employer’s practices described above, including forcing employees to wait in
21 long lines to clock in for work and to receive mandatory temperature checks, requiring
22 employees to answer a mandatory health questionnaire off the clock and putting on and
23 taking off a mandatory work uniform. Based on Employer’s unlawful conduct described
24 above, and because Plaintiff and the aggrieved employees were paid at or near minimum
25 wage, employer’s failure to pay for all hours worked, including overtime, resulted in a
26 payment of less than the minimum wage for all hours worked, in violation of Labor Code
27 §1197, 1197.1, 1199 and Wage Order 1-2001 4(B). Employer is liable for civil penalties
28 pursuant to Labor Code §§558 and 2699 *et seq.*

(Cal. Labor Code §§226 (a), 226.7, 512, 558, 1198, 2698 et seq., Wage Order 1)

29. Labor Code §512 provides, “[a]n employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes...” Labor Code §226.7(a) provides, “[n]o employer shall require an employee to work during any meal... period mandated by an applicable order of the Industrial Welfare Commission.” Paragraph 11 of Wage Order 1 provides, in pertinent part, “[u]nless an employee is relieved of all duty during a 30-minute meal period, the meal period shall be considered an ‘on duty’ meal period and counted as time worked.”

30. In this case, Plaintiff claims that although she and her coworkers frequently were given their meal breaks late and were often interrupted. Plaintiff and those similarly situated would often work more than five consecutive hours with no meal break.

31. Section 11 of Wage Order 1 requires employers to authorize and permit employees to take an uninterrupted 30-minute meal period after no more than 5 hours of work. Pursuant to Labor Code §1198, “the employment of any employee... under conditions of labor prohibited by the order is unlawful.” Employer failed to permit Plaintiff and others to take timely, off-duty, meal breaks of “not less than 30 minutes” for each five consecutive hours of work in violation of Labor Code §§226.7 and 512. Employer never paid penalty pay to Plaintiff or aggrieved employees at their regular rate of pay as required for noncompliant meal periods. As a derivative claim, Plaintiff alleges that her pay statements were inaccurate, failing to include required meal period penalties, thus failing the requirements of Labor Code §226(a). As a result of these violations, Employers are liable for civil penalties pursuant to Cal. Labor Code §558 and §2698 *et seq.*

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1 the employee's regular rate of compensation for each workday
2 that the meal or rest or recovery period is not provided.

3 37. Employers required Plaintiff and aggrieved employees to consistently work in in
4 temperatures far exceeding eighty (80) degrees Fahrenheit, often exceeding 100 degrees,
5 and did not provide adequate cool down period opportunities. Because the break room
6 was a 3-4 minute walk from the work area and because there was no seating provided in
7 the work area by the Employer, there was no opportunity to be able to cool down. Plaintiff
8 and aggrieved did not feel safe asking to take a moment of rest if they felt like they were
9 going to pass out from the heat because of intimidation and pressure from their Employers.
10 Plaintiff did, in fact, witness a fellow Employee pass out from the heat in their working
11 area. The Plaintiff and aggrieved employees were exposed to a high risk of suffering heat
12 illness so that their life, safety, and health were jeopardized by Employer's conduct,
13 violating California Code of Regulation, Title, section 3395 and Labor Code sections
14 226.7 and 1198.

15 **Failure to Provide Safe Working Conditions**
16 **(Cal. Labor Code §1198, Wage Order 1)**

17 38. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
18 incorporate said paragraphs herein by reference.

19 39. Employer's workplaces would get unsafely hot. Plaintiff and aggrieved
20 employees were forced to work in incredibly hot and unventilated rooms reaching
21 temperatures of over 100 degrees.

22 40. Employer does not have proper climate control or ventilation. Plaintiff and her
23 coworkers worked in unbearable heat and.

24 41. Wage Order 1 ¶15 requires:

25 (A) The temperature maintained in each work area shall provide reasonable
26 comfort consistent with industry-wide standards for the nature of the process and the work
27 performed.
28

1 (B) If excessive heat or humidity is created by the work process, the employer shall
2 take all feasible means to reduce such excessive heat or humidity to a degree providing
3 reasonable comfort.

4 42. In addition to climate control issues, Employer failed to take safety measures
5 required to keep employees safe during COVID-19. Labor Code 1198 makes it unlawful
6 to employ employee in conditions prohibited by the wage order. By violating the wage
7 order, Employer is liable for civil penalties pursuant to §2698 *et. seq.*

8 **Failure to Provide Place Of Employment That Is Safe And Healthful**
9 **(Cal. Labor Code §§6400, 6401, 6402, 6403, 6404, 6407, 2699 *et seq.*, 8 CCR 3202)**

10 43. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
11 incorporate said paragraphs herein by reference.

12 44. Cal. Labor Code § 6400(a) provides that every employer shall furnish
13 employment and a place of employment that is safe and healthful for the employees
14 therein. Cal. Labor Code §6401 provides that “every employer shall furnish and use safety
15 devices and safeguards, and shall adopt and use practices, means, methods, operations,
16 and processes which are reasonably adequate to render such employment and place of
17 employment safe and healthful. Every employer. Pursuant to Cal. Labor Code §6402, no
18 employer shall require, or permit any employee to go or be in any employment or place
19 of employment which is not safe and healthful. Cal. Labor Code §6403 states that no
20 employer shall fail or neglect to provide and use safety devices and safeguards reasonably
21 adequate to render the employment and place of employment safe, or to adopt and use
22 methods and processes reasonably adequate to render the employment and place of
23 employment safe, or to do every other thing reasonably necessary to protect the life, safety,
24 and health of employees. Cal. Labor Code § 6404 provides that no employer shall occupy
25 or maintain any place of employment that is not safe and healthful. Cal. Labor Code §
26 6407 provides that every employer and every employee shall comply with occupational
27 safety and health standards, with Section 25910 of the Health and Safety Code, and with
28 all rules, regulations, and orders pursuant to this division which are applicable to his own
actions and conduct.

1 45. Employer failed to timely make changes to the workplace at the onset of COVID.
2 Under LC §6409.6(a)(1). “COVID-19” means severe acute respiratory syndrome
3 coronavirus 2 (SARS-CoV-2). The Employees continued to work without distancing
4 during a portion of their workday which was performed outside. Employers did not
5 provide adequate masks for their Employees. Masks were only given to those who forgot
6 to bring their own personal masks to work. There was no effective written covid
7 prevention program. Plaintiff is knowledgeable of COVID outbreaks at the workplace
8 and believes they were due to a lack of COVID safety practices. Employers employed
9 their employees under unsafe conditions violative of Cal-OSHA regulations and the
10 Health and Safety Code.

11 46. As a result of these practices, Employers have violated Cal. Labor Code §§6400,
12 6401, 6402, 6403, 6404, and 6407 for failure to provide a safe and healthful environment
13 for their Employees, as outlined above. Employers are liable for civil penalties pursuant
14 to Cal. Labor Code §2699 *et seq.*

15 **Failure To Provide Suitable Seating**

16 **(Lab. Code section 1198 and Wage Order 1-2001, Section 14)**

17 47. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
18 incorporate said paragraphs herein by reference.

19 48. Labor Code section 1198 states, in pertinent part, “The employment of any
20 employee... under conditions of labor prohibited by the [Wage Order] is unlawful.”
21 Section 14 of Wage Order 1 provides that:

22 (A) All working employees shall be provided with suitable seats when the
23 nature of the work reasonably permits the use of seats.

24 (B) When employees are not engaged in the active duties of their employment
25 and the nature of the work requires standing, an adequate number of suitable seats shall
26 be placed in reasonable proximity to the work area and employees shall be permitted to
27 use such seats when it does not interfere with the performance of their duties.
28

1 49. At all relevant times, Employer failed to provide Plaintiff and aggrieved
2 employees with suitable seating during their employment as required by section 12 of the
3 applicable Wage Order. Plaintiff and other aggrieved employees were not provided with
4 seating during shifts in which they worked at positions which would reasonably permit
5 the use of seating, nor was seating provided within a 3-4 minute walk from work areas for
6 necessary breaks. Accordingly, Plaintiff, on behalf of herself and aggrieved employees,
7 will pursue civil penalties under Labor Code §2698 *et seq.*, and all available remedies to
8 the extent allowed by law for the alleged violations.

9 **Failure to Reimburse for Required Business Expenses**

10 **(Cal. Labor Code §§1198, 2802, 2699 *et seq.*)**

11 50. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
12 incorporate said paragraphs herein by reference.

13 51. Labor Code §2802 requires employers to indemnify employees for necessary
14 expenditures or losses incurred by employees in direct consequence of the discharge of
15 duties.

16 52. Plaintiff and aggrieved employees are required to use their personal cell phones
17 for work related communications, although Employers did not reimburse them in any way
18 for the expense of their personal cell phone use as required by the Labor Code. Notably,
19 employees are required to answer a COVID health questionnaire every day prior to
20 clocking in for work. This requires employees to utilize their personal every workday for
21 the sole purpose of serving their employers. Employees were also expected to provide
22 their own personal masks during work and were not reimbursed for them. Accordingly,
23 Employers are liable for civil penalties under PAGA §2699 *et seq.*

24 **Failure to Provide Accurate Itemized Wage Statements**

25 **(Cal. Labor Code §§ 226, 1174, 2699 *et seq.*)**

26 53. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
27 incorporate said paragraphs herein by reference.
28

54. Employer knowingly and intentionally failed to provide timely, accurate, itemized wage statements to Plaintiffs and the aggrieved employees, and maintain accurate records, in accordance with Labor Code §§ 226 and 1174.

55. Based on and as a result of the above-mentioned Labor Code violations, Employers maintained and issued inaccurate wage statements, failing to include required hours and overtime hours worked and misrepresenting actual regular hours worked on the final wage statement. Employer further failed to include meal and rest period penalties, thus failing the requirements of Labor Code §226(a). Employer also failed to list required sick pay pursuant to Executive Order N-51-20. Such failures caused injury to Plaintiff and others, by, among other things, impeding them from knowing the total hours worked and the amount of wages to which they are and were entitled.

56. Plaintiff will seek penalties as permitted under Labor Code §226 for herself and other aggrieved employees for each violation. Further, Plaintiff will seek recovery of civil penalties under Labor Code §226.3, and PAGA, Labor Code §2698, *et seq.*, on behalf of the LWDA against the Employers if authorized to file a representative action on behalf of the State of California for Employers' paystub violations.

FIRST CAUSE OF ACTION

**Against All Defendants for Violation of the Private Attorneys General Act
("PAGA")**

(California Labor Code §2698 *et seq.*)

57. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and incorporate said paragraphs herein by reference.

58. Plaintiff is an “aggrieved employee” under PAGA, as they were employed by Defendants during the applicable statutory period and suffered one or more of the Labor Code violations set forth herein. Accordingly, Plaintiff seeks to recover on behalf of themselves and all other current and former aggrieved employees of Defendants, the civil penalties provided by PAGA, plus reasonable attorneys’ fees and costs.

1 59. Plaintiff seeks to recover the PAGA civil penalties through a representative
2 action permitted by PAGA and the California Supreme Court in *Arias v. Superior Court*
3 (2009) 46 Cal. 4th 969. Therefore, class certification of the PAGA claims brought herein
4 is not required.

5 60. Plaintiff seeks civil penalties pursuant to PAGA for violations of the following
6 Labor Code provisions:

- 7 a. Failure to Pay for All Hours Worked, Including Overtime Hours Worked
8 (Cal. Labor Code §§210, 218, 222, 226.7, 510, 512, 558, 1194, 1197,
9 1198, 2698 *et seq.*);
 - 10 b. Failure to Pay Minimum Wage (Cal. Labor Code §§ 200, 218.5, 226, 558,
11 1194, 1194.2, 1197, 1197.2, 1198, 1199, 2698 *et seq.*)
 - 12 c. Failure to Provide Timely Meal Breaks (Cal. Labor Code §§226 (a), 226.7,
13 512, 558, 1198, 2698 *et seq.*, Wage Order 1)
 - 14 d. Failure to Provide Rest Breaks (Cal. Labor Code §§226, 226.7, 512, 558,
15 1198, 2698 *et seq.*);
 - 16 e. Failure to Provide Proper Cool-Down Rest Periods Cal. Labor Code §§
17 226.7, 1198, 2698 *et seq.*)
 - 18 f. Failure to Provide Safe Working Conditions (Cal. Labor Code §1198,
19 Wage Order 1)
 - 20 g. Failure to Provide Place Of Employment That Is Safe And Healthful (Cal.
21 Labor Code §§6400, 6401, 6402, 6403, 6404, 6407, 2699 *et seq.*, 8 CCR
22 3202)
 - 23 h. Failure To Provide Suitable Seating (Lab. Code section 1198 and Wage
24 Order 1-2001, Section 14)
 - 25 i. Failure to Reimburse for Required Business Expenses (Cal. Labor Code
26 §§1198, 2802, 2699 *et seq.*)
- 27
28

j. Failure to Provide Accurate Itemized Wage Statements & Violation of Record Keeping Requirements (Cal. Labor Code §§ 226, 1174(d), 2699 *et seq.*)

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

62. With respect to violations of Labor Code §510, Labor Code §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, and one hundred dollars (\$100) for subsequent violations for each underpaid employee for each pay period for which the employee was underpaid. Plaintiff only seeks penalties under §558 and does not seek underpaid wages under §558, which are not available in PAGA actions.

63. Labor Code §2698 *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.

64. Plaintiff and the other current and former employees of Defendants are aggrieved employees. They were or are employed by Defendants, and each of them, and the violations alleged herein were committed against them. Plaintiff brings this action on behalf of themselves and all other current and former aggrieved employees.

65. At the time of each violation, Defendants employed one or more employees.

66. As a result of the aforesaid wrongful and illegal conduct of Defendants, and each of them, Plaintiff and aggrieved employees are entitled to civil penalties in an amount to be determined at trial, pre-judgment interest, costs, and attorneys' fees.

67. Plaintiff has complied with all procedural requirements of Labor Code §2699.3 prior to filing this Complaint. By the Notice attached as Exhibit 1, submitted online to the

1 Labor and Workforce Development Agency (“LWDA”) and served by certified mail upon
2 Defendants, Plaintiff through counsel notified the LWDA and Defendants of the specific
3 Labor Code provisions that Defendants have violated. The LWDA did not respond to
4 Plaintiff’s Notice within the statutory timeframe, and Plaintiff has therefore exhausted
5 administrative remedies. Pursuant to Labor Code §2699.3, Plaintiff may now pursue their
6 PAGA claims in this action on behalf of aggrieved employees and the State of California.

7 **PRAYER FOR RELIEF**

8 WHEREFORE, Plaintiff, individually and on behalf of the aggrieved employees,
9 prays for judgement against Defendants as follows:

- 10 1. An award of civil penalties pursuant to PAGA and the Cal. Labor Code in an amount
11 to be determined at trial, but at least the jurisdictional amount of this Court;
12 2. An award of reasonable attorneys’ fees and costs pursuant to California Labor Code
13 §2699(g) and/or other applicable law;
14 3. For civil penalties as provided under Labor Code §§226.3 and 558, and/or other
15 applicable law;
16 4. Pre-judgement and post-judgement interest as provided by law; and
17 5. Such other and further relief that the Court may deem just and proper.

18
19 DATED: October 12, 2021
20

21 **KOUL LAW FIRM**

22
23
24 

25 BY: Nazo Koulloukian, Esq.
26 Attorneys for Plaintiff Laura Lizeth Barboza
27 Gomez, and all aggrieved employees
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EXHIBIT A



Nazo@Koullaw.com

P (213) 761 – 5484

F (818) 561 – 3938

3435 WILSHIRE BLVD

SUITE 1710

LOS ANGELES, CA 90010

www.koullaw.com

August 5, 2021

Via E-filing:

California Labor & Workforce
Development Agency
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102

Via Certified U.S. Mail:

Rudolph Foods Company, Inc.
P.O. Box 509
Lima, OH 45802

Rudolph Foods Company, Inc.
C/O Francisco Quirarte
920 W. 4th St.
Beaumont, CA

Rudolph Foods Company, Inc.
6575 Bellefontaine Rd.
Lima, OH 45804

Re: PAGA Notice Pursuant to California Labor Code §2698 *et seq.*

Claimant: Laura Barboza
Employer: Rudolph Foods Company, Inc.

Dear Sir or Madam:

Laura Barboza (“Claimant”) has retained Nazo Koulloukian, Esq. of the KOUL LAW FIRM and Sahag Majarian of Law Offices of Sahag Majarian II, to represent her, and all other aggrieved employees, for conditions of employment and wage and hour claims against her former employer, Rudolph Foods Company, Inc. (hereafter “Employers”).

Rudolph Foods Company, Inc. is a food production and packaging company. The work being done by the wage laborers is packaging Rudolph Foods Company, Inc.’s products into boxes for shipment. Claimant worked for Employers from 2019 until June 29, of 2021.

Employers have violated, and/or has caused to be violated, several Labor Code provisions, and it is therefore liable for civil penalties under Cal. Labor Code §2698 *et seq.* We request that your agency investigate the claims alleged below, or permit claimant

to seek civil penalties under the Private Attorney General Act (“PAGA”), Labor Code §2698 *et seq.*, on behalf of the Labor and Workforce and development Agency (“LWDA”) and the State of California in a representative action. This letter will serve as notice of these allegations pursuant to Cal. Lab. Code §2699.3.

Failure to Comply with California Law Concerning Payment of Lawful Wage For All Hours Worked, Including Overtime Hours Worked

(Cal. Labor Code §§218, 510, 558, 1194, 1197, 1198, 1199, 2698 *et seq.*)

Section 2(G) of Wage Order 1 defines “hours worked” as “the time during which an employee is subject to the control of an employer, and including all the time the employee is suffered or permitted to work, whether or not required to do so.” When employees like Claimant and her coworkers earning at or near minimum wage do not receive payment for all hours worked as a result of unlawful employment practices, including being forced to wait in line for temperature checks prior to clocking in, answering a required health questionnaire from their phone prior to clocking in and being required to put on and take off a work uniform while off the clock, the result is that they are earning less than the statutory minimum wages for all hours worked. Employer has been engaged in many unlawful employment practices which resulted in underpayment for hours worked each pay period, including overtime hours worked, as more fully set forth below. Employer has also failed to pay the required minimum wage for all hours worked, and has failed to pay all wages owed twice per month.

Off-the-Clock Hours Worked- Waiting in Required Lines

Claimant and aggrieved employees frequently worked off the clock and were routinely subjected to periods wherein they were under the Employer’s control but not compensated for their time. Claimant and aggrieved employees were required to perform several required duties off the clock. Employees were required to wait in lines to clock in for work because there was only one machine to do so, taking up to 2 minutes of their time for which they were under Employer’s control but were paid nothing. Employees were also required to participate in mandatory temperature checks prior to clocking into work. This time spent waiting in these required lines was required by Employer and was essential and required before employees could begin and/or resume working on the clock. Claimant and aggrieved employees were also required to answer a series of COVID related questions on their personal cell phones, during their personal time prior to clocking in for work. Finally, Claimant and aggrieved employees were also required to put on and take off a work uniform, for which they were paid zero for their dress/undress time. Employer has violated Labor Code §§510 1194, 1198, 1199 and Wage Order 1. Employer is liable for civil penalties pursuant to Labor Code §§558 and 2698 *et seq.*

Failure to Include Bonus Pay in Regular Rate of Pay for Calculating Overtime

Pursuant to Labor Code §200(a) “‘Wages’ includes all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, commission basis, or other method of calculation.”

Employer fails to include nondiscretionary bonuses into the regular rate of pay for purposes of calculating overtime.

Bonuses. It is well established that non-discretionary bonuses retroactively increase the employee’s “regular rate” of pay for purposes of calculating overtime. (Labor Code §207) The “regular rate” is calculated by dividing the hours worked in a week by all the compensation earned for that week. When an employee is later paid a bonus that is partly due to work performed in that week, this additional pay must be added into the total compensation for the week, increasing the employee’s regular rate of pay. (*Marin v. Costco Wholesale Corp.* (2008) 169 CA4th 804, 807.)

Employer has failed to properly calculate and pay overtime compensation, making no adjustment to overtime rates reflected in any of Claimant or aggrieved employees’ paystubs. Claimant and other employees have been denied “the unpaid balance of the full amount of this... overtime compensation” as required by Cal. Labor Code. §1194. Additionally, Employer has violated Cal. Labor Code §218 and §510 and applicable Industrial Welfare Commission Wage Orders at sections (3)(A)(1) for failure to pay overtime, as well as §1198 which makes it a violation of the labor code to fail to comply with a wage order.

Work Performed During Unpaid Meal Periods

As more fully set forth below, Employer failed to permit Claimant and others to take timely, off-duty, meal breaks of “not less than 30 minutes” for each five consecutive hours of work in violation of Labor Code §§226.7 and 512. Claimant and aggrieved employees have been employed under conditions prohibited by the wage order, and thus Employer has also violated §§1198 and 1199. Employer is liable for civil penalties pursuant to Labor Code §§558 and 2699 *et seq.*

Failure to Pay All Wages Owed Twice Per Month

Employer was required to pay Claimants and employee all wages earned twice during each calendar month pursuant to Labor Code §204(a). Employer failed to pay all wages earned to employees as a result of the unlawful employment policies and practices discussed herein. As a result of these practices, Employees were underpaid for hours worked, including penalty wages, and this underpayment resulted in a failure to pay all wages owed twice per month.

Failure to Pay Minimum Wage

(Cal. Labor Code §§ 200, 218.5, 226, 558, 1194, 1194.2, 1197, 1197.2, 1198, 1199, 2698 *et seq.*)

Pursuant to Labor Code sections 1194, 1194.2 and 1197, it is unlawful for an employer to suffer or permit a California employee to work without paying wages at the proper minimum wage for all time worked as required by the applicable IWC Wage Order.

Employer failed to pay Claimant and aggrieved employees for all hours worked as a result of Employer's practices described above, including forcing employees to wait in long lines to clock in for work and to receive mandatory temperature checks, requiring employees to answer a mandatory health questionnaire off the clock and putting on and taking off a mandatory work uniform. Based on Employer's unlawful conduct described above, and because Claimant and the aggrieved employees were paid at or near minimum wage, employer's failure to pay for all hours worked, including overtime, resulted in a payment of less than the minimum wage for all hours worked, in violation of Labor Code §1197, 1197.1, 1199 and Wage Order 1-2001 4(B). Employer is liable for civil penalties pursuant to Labor Code §§558 and 2699 *et seq.*

Failure to Provide Timely Meal Breaks

(Cal. Labor Code §§226 (a), 226.7, 512, 558, 1198, 2698 *et seq.*, Wage Order 1)

Labor Code §512 provides, "[a]n employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes..." Labor Code §226.7(a) provides, "[n]o employer shall require an employee to work during any meal... period mandated by an applicable order of the Industrial Welfare Commission." Paragraph 11 of Wage Order 1 provides, in pertinent part, "[u]nless an employee is relieved of all duty during a 30-minute meal period, the meal period shall be considered an 'on duty' meal period and counted as time worked."

In this case, Claimant claims that although she and her coworkers frequently were given their meal breaks late and were often interrupted. Plaintiff and those similarly situated would often work more than five consecutive hours with no meal break.

Section 11 of Wage Order 1 requires employers to authorize and permit employees to take an uninterrupted 30-minute meal period after no more than 5 hours of work. Pursuant to Labor Code §1198, "the employment of any employee... under conditions of labor prohibited by the order is unlawful." Employer failed to permit Claimant and others to take timely, off-duty, meal breaks of "not less than 30 minutes" for each five

consecutive hours of work in violation of Labor Code §§226.7 and 512. Employer never paid penalty pay to Claimant or aggrieved employees for noncompliant meal periods. As a derivative claim, Claimant alleges that her pay statements were inaccurate, failing to include required meal period penalties, thus failing the requirements of Labor Code §226(a). As a result of these violations, Employers are liable for civil penalties pursuant to Cal. Labor Code §558 and §2698 *et. seq.*

Failure to Provide Rest Breaks

(Cal. Labor Code §§226, 226.7, 512, 558, 1198, 2698 et seq.)

Employer has failed to maintain a policy and practice that provides or permits its employees to take off-duty rest periods as required by California law. Employees are entitled to at least a ten minute rest period in which they are relieved of all duties, as required by Cal. Lab. Code §226.7, §512 and Wage Order 1. Often Employees were not given timely rest breaks and when they were allowed to take timely rest breaks they were frequently interrupted.

Employer failed to pay Claimant and similarly situated employees all premium compensation (one hour of pay at the employee's regular rate of pay for missed or untimely rest periods) mandated by Labor Code §226.7 (b) for these missed rest periods. As a derivative claim, Claimant alleges that pay statements were inaccurate, failing to include required rest period penalties, thus failing the requirements of Labor Code §226(a) and §1198. As a result of these violations, Employer is liable for civil penalties pursuant to Cal. Labor Code §558 and §2698 *et. seq.*

Failure to Provide Proper Cool-Down Rest Periods

(Cal. Labor Code §§ 226.7, 1198, 2698 et seq)

Labor Code section 226.7, subdivision (c) further provides that:

If an employer fails to provide an employee a... recovery period in accordance with a state ., law, including, but not limited to an applicable statute or applicable regulation, standard, or order of the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee 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.

Employers required Claimant and aggrieved employees to consistently work in in temperatures far exceeding eighty (80) degrees Fahrenheit and did not provide adequate

cool down period opportunities. Because the break room was a 3-4 minute walk from the work area and because there was no seating provided in the work area by the Employer, there was no opportunity to be able to cool down. Claimant and aggrieved did not feel safe asking to take a moment of rest if they felt like they were going to pass out from the heat because of intimidation and pressure from their Employers. Claimant did, in fact, witness a fellow Employee pass out from the heat in their working area. The Claimant and aggrieved employees were exposed to a high risk of suffering heat illness so that their life, safety, and health were jeopardized by Employer's conduct, violating California Code of Regulation, Title, section 3395 and Labor Code sections 226.7 and 1198.

Failure to Provide Safe Working Conditions
(Cal. Labor Code §1198, Wage Order 1)

Employer's workplaces would get unsafely hot. Claimant and aggrieved employees were forced to work in incredibly hot and unventilated rooms reaching temperatures of over 100 degrees.

Employer does not have proper climate control or ventilation. Claimant and her coworkers worked in unbearable heat and.

Wage Order 1 ¶15 requires:

(A) The temperature maintained in each work area shall provide reasonable comfort consistent with industry-wide standards for the nature of the process and the work performed.

(B) If excessive heat or humidity is created by the work process, the employer shall take all feasible means to reduce such excessive heat or humidity to a degree providing reasonable comfort.

In addition to climate control issues, Employer failed to take safety measures required to keep employees safe during COVID-19. Labor Code 1198 makes it unlawful to employ employee in conditions prohibited by the wage order. By violating the wage order, Employer is liable for civil penalties pursuant to §2698 *et. seq.*

Failure to Provide Place Of Employment That Is Safe And Healthful

(Cal. Labor Code §§6400, 6401, 6402, 6403, 6404, 6407, 2699 *et seq.*, 8 CCR 3202)

Cal. Labor Code § 6400(a) provides that every employer shall furnish employment and a place of employment that is safe and healthful for the employees therein. Cal. Labor Code §6401 provides that "every employer shall furnish and use safety devices and

safeguards, and shall adopt and use practices, means, methods, operations, and processes which are reasonably adequate to render such employment and place of employment safe and healthful. Every employer. Pursuant to Cal. Labor Code §6402, no employer shall require, or permit any employee to go or be in any employment or place of employment which is not safe and healthful. Cal. Labor Code §6403 states that no employer shall fail or neglect to provide and use safety devices and safeguards reasonably adequate to render the employment and place of employment safe, or to adopt and use methods and processes reasonably adequate to render the employment and place of employment safe, or to do every other thing reasonably necessary to protect the life, safety, and health of employees. Cal. Labor Code § 6404 provides that no employer shall occupy or maintain any place of employment that is not safe and healthful. Cal. Labor Code § 6407 provides that every employer and every employee shall comply with occupational safety and health standards, with Section 25910 of the Health and Safety Code, and with all rules, regulations, and orders pursuant to this division which are applicable to his own actions and conduct.

Employer failed to timely make changes to the workplace at the onset of COVID. Under LC §6409.6(a)(1). “COVID-19” means severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2). The Employees continued to work without distancing during a portion of their workday which was performed outside. Employers did not provide adequate masks for their Employees. Masks were only given to those who forgot to bring their own personal masks to work. There was no effective written covid prevention program. Claimant is knowledgeable of COVID outbreaks at the workplace and believes they were due to a lack of COVID safety practices. Employers employed their employees under unsafe conditions violative of Cal-OSHA regulations and the Health and Safety Code.

As a result of these practices, Employers have violated Cal. Labor Code §§6400, 6401, 6402, 6403, 6404, and 6407 for failure to provide a safe and healthful environment for their Employees, as outlined above. Employers are liable for civil penalties pursuant to Cal. Labor Code §2699 *et seq.*

Failure To Provide Suitable Seating
(Lab. Code section 1198 and Wage Order 1-2001, Section 14)

Labor Code section 1198 states, in pertinent part, “The employment of any employee... under conditions of labor prohibited by the [Wage Order] is unlawful.”

Section 14 of Wage Order 1 provides that:

(A) All working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats.

(B) When employees are not engaged in the active duties of their employment and the nature of the work requires standing, an adequate number of suitable seats shall be placed in reasonable proximity to the work area and employees shall be permitted to use such seats when it does not interfere with the performance of their duties.

At all relevant times, Employer failed to provide Claimant and aggrieved employees with suitable seating during their employment as required by section 12 of the applicable Wage Order. Claimant and other aggrieved employees were not provided with seating during shifts in which they worked at positions which would reasonably permit the use of seating, nor was seating provided within a 3-4 minute walk from work areas for necessary breaks. Accordingly, Claimant, on behalf of herself and aggrieved employees, will pursue civil penalties under Labor Code §2698 *et seq.*, and all available remedies to the extent allowed by law for the alleged violations.

Failure to Reimburse for Required Business Expenses

(Cal. Labor Code §§1198, 2802, 2699 *et seq.*)

Labor Code §2802 requires employers to indemnify employees for necessary expenditures or losses incurred by employees in direct consequence of the discharge of duties.

Claimant and aggrieved employees are required to use their personal cell phones for work related communications, although Employers did not reimburse them in any way for the expense of their personal cell phone use as required by the Labor Code. Notably, employees are required to answer a COVID health questionnaire every day prior to clocking in for work. This requires employees to utilize their personal every workday for the sole purpose of serving their employers. Employees were also expected to provide their own personal masks during work and were not reimbursed for them. Accordingly, Employers are liable for civil penalties under PAGA §2699 *et seq.*

Failure to Provide Accurate Itemized Wage Statements

(Cal. Labor Code §§ 226, 1174, 2699 *et seq.*)

Employer knowingly and intentionally failed to provide timely, accurate, itemized wage statements to Claimants and the aggrieved employees, and maintain accurate records, in accordance with Labor Code §§ 226 and 1174.

Based on and as a result of the above-mentioned Labor Code violations, Employers maintained and issued inaccurate wage statements, failing to include required hours and overtime hours worked and misrepresenting actual regular hours worked on the final wage statement. Employer further failed to include meal and rest period penalties, thus failing the requirements of Labor Code §226(a). Employer also failed to list required sick pay pursuant to Executive Order N-51-20. Such failures caused injury to Claimant and others, by, among other things, impeding them from knowing the total hours worked and the amount of wages to which they are and were entitled.

Claimant will seek penalties as permitted under Labor Code §226 for herself and other aggrieved employees for each violation. Further, claimant will seek recovery of civil penalties under Labor Code §226.3, and PAGA, Labor Code §2698, *et seq.*, on behalf of the LWDA against the Employers if authorized to file a representative action on behalf of the State of California for Employers' paystub violations.

Conclusion

Employers have violated a number of California wage and hour laws. Claimant respectfully requests that the agency investigate the above allegations and hereby provides notice of the allegations pursuant to PAGA's provisions. Alternatively, Claimant requests that the agency inform her if it does not intend to investigate these violations so that she may pursue these claims as a representative action in civil court.

Sincerely,



Nazo Koulloukian, Esq.

Sahag Majarian, II, Esq.

Attorney for Claimant

Cc:

Sahag Majarian, Esq.

Law Offices of Sahag Majarian II

18250 Ventura Blvd.

Tarzana, CA 91356

ORIGINAL

CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address) Nazo Koulloukian, SBN 263809 KOUL LAW FIRM 3435 Wilshire Blvd., Suite 1710 Los Angeles, CA 90010 TELEPHONE NO.: (213) 761-5484 FAX NO.: (818) 561-3938 ATTORNEY FOR (Name): Plaintiff and the Aggrieved Employees		FOR COURT USE ONLY FILED SUPERIOR COURT OF CALIFORNIA COUNTY OF SAN BERNARDINO SAN BERNARDINO DISTRICT OCT 12 2021 BY <u>Nicole Cartwright</u> NICOLE CARTWRIGHT, DEPUTY	
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 92415 BRANCH NAME: Civil Division			
CASE NAME: BARBOZA GOMEZ v. RUDOLPH FOODS COMPANY, INC., et al.			
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)	CIVIL CASE NUMBER CVSB 2129090
		JUDGE:	DEPT:

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

1. Check one box below for the case type that best describes this case:

Auto Tort ☐ Auto (22) ☐ Uninsured motorist (46) Other P/DPD/WD (Personal Injury/Property Damage/Wrongful Death) Tort ☐ Asbestos (04) ☐ Product liability (24) ☐ Medical malpractice (45) ☐ Other P/DPD/WD (23) Non-P/DPD/WD (Other) Tort ☐ Business tort/unfair business practice (07) ☐ Civil rights (08) ☐ Defamation (13) ☐ Fraud (16) ☐ Intellectual property (19) ☐ Professional negligence (25) ☐ Other non-P/DPD/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)
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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): One (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: October 12, 2021
Nazo Koulloukian

(TYPE OR PRINT NAME)

(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

FILED BY FAX

COPY

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN BERNARDINO

LAURA LIZETH BARBOZA GOMEZ

CASE NO. **CIV SB 2129090**

vs.

CERTIFICATE OF ASSIGNMENT

RUDOLPH FOODS COMPANY, INC.

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 CIVIL DIVISION OF SAN BERNARDINO District of the Superior Court under Rule 404 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 the district 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 <u>PAGA ACTION</u> | <u>Defendant's Principal Place of Business is Located Within</u> |
| ☐ 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:

RUDOLPH FOODS COMPANY, INC.

145 Hillcrest Ave.

NAME - INDICATE TITLE OR OTHER QUALIFYING FACTOR

ADDRESS

San Bernardino

CA

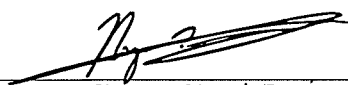
92408

CITY

STATE

ZIP CODE

I declare, under penalty of perjury, that the foregoing is true and correct and that this declaration was executed on October 12, 2021 at Los Angeles, California


Signature of Attorney/Party

CERTIFICATE OF ASSIGNMENT