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

Case No. _____

**REPRESENTATIVE ACTION
COMPLAINT FOR:**

Plaintiff,

vs.

SMITHFIELD PACKAGED MEATS CORP.,
a Corporation; and DOES 1 through 50,
inclusive,1. Civil Penalties Pursuant to Labor Code
§ 2699, *et seq.* for violations of Labor
Code §§ 201, 202, 203, 204 *et seq.*, 210,
221, 226(a), 226.7, 227.3, 351, 510, 512,
558(a)(1)(2), 1194, 1197, 1197.1, 1198,
2802, California Code of Regulations,
Title 8, Section 11040, Subdivision 5(A)-
(B)

Defendants.

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

6 **INTRODUCTION**

7 1. PLAINTIFF brings this action against Defendant Smithfield Packaged Meats
8 Corp. (referred to as “DEFENDANT”) seeking only to recover PAGA civil penalties for
9 herself, and on behalf of all current and former aggrieved employees that worked for
10 DEFENDANT. PLAINTIFF does **not seek to recover anything other than penalties as**
11 **permitted by California Labor Code § 2699.** To the extent that statutory violations are
12 mentioned for wage violations, PLAINTIFF does not seek underlying general and/or special
13 damages for those violations, but simply the civil penalties permitted by California Labor Code
14 § 2699.

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

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

23 **THE PARTIES**

24 4. Defendant Smithfield Packaged Meats Corp. (“DEFENDANT”) is a corporation
25 that at all relevant times mentioned herein conducted and continues to conduct substantial
26 business in the state of California.

27 5. DEFENDANT is an American food company.
28

1 6. PLAINTIFF has been employed by DEFENDANT in California since 2001 and
2 has been at all times classified by DEFENDANT as a non-exempt employee, paid on an hourly
3 basis, and entitled to the legally required meal and rest periods and payment of minimum and
4 overtime wages due for all time worked.

5 7. PLAINTIFF, and such persons that may be added from time to time who satisfy
6 the requirements and exhaust the administrative procedures under the Private Attorney General
7 Act, brings this Representative Action on behalf of the State of California with respect to herself
8 and all individuals who are or previously were employed by DEFENDANT in California and
9 who were classified as non-exempt employees ("AGGRIEVED EMPLOYEES") during the
10 time period of September 15, 2020 until a date as determined by the Court (the "PAGA
11 PERIOD").

12 8. PLAINTIFF, on behalf of herself and all AGGRIEVED EMPLOYEES presently
13 or formerly employed by DEFENDANT during the PAGA PERIOD, brings this representative
14 action pursuant to Labor Code § 2699, *et seq.* seeking fixed civil penalties for DEFENDANT's
15 violation of California Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 221, 226(a), 226.7, 227.3,
16 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations,
17 Title 8, Section 11040, Subdivision 5(A)-(B), and the applicable Wage Order(s). Based upon
18 the foregoing, PLAINTIFF and all AGGRIEVED EMPLOYEES are aggrieved employees
19 within the meaning of Labor Code § 2699, *et seq.*

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

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

THE CONDUCT

11. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was required to pay PLAINTIFF and other AGGRIEVED EMPLOYEES for all their time worked, meaning the time during which an employee is subject to the control of an employer, including all the time the employee is suffered or permitted to work. DEFENDANT requires PLAINTIFF and other AGGRIEVED EMPLOYEES to work without paying them for all the time they are under DEFENDANT's control. Among other things, DEFENDANT requires PLAINTIFF to work while clocked out during what is supposed to be PLAINTIFF's off-duty meal break. PLAINTIFF is from time to time interrupted by work assignments while clocked out for what should be PLAINTIFF's off-duty meal break. PLAINTIFF and other AGGRIEVED EMPLOYEES also worked off the clock with respect to time spent undergoing mandatory drug testing or any other testing and/or examination required as a condition of employment. DEFENDANT, as a matter of established company policy and procedure, administers a uniform practice of rounding the actual time worked and recorded by PLAINTIFF and other AGGRIEVED EMPLOYEES, always to the benefit of DEFENDANT, so that during the course of their employment, PLAINTIFF and other AGGRIEVED EMPLOYEES are paid less than they would have been paid had they been paid for actual recorded time rather than "rounded" time. Additionally, DEFENDANT engages in the practice of requiring PLAINTIFF and other AGGRIEVED EMPLOYEES to perform work off the clock in that DEFENDANT, as a

1 condition of employment, required these employees to submit to mandatory temperature checks
2 and symptom questionnaires for COVID-19 screening prior to clocking into DEFENDANT's
3 timekeeping system for the workday and also prior to clocking back into DEFENDANT's
4 system after returning from a meal break. As a result, PLAINTIFF and other AGGRIEVED
5 EMPLOYEES forfeit minimum wage, overtime wage compensation, and off-duty meal breaks
6 by working without their time being correctly recorded and without compensation at the
7 applicable rates. DEFENDANT's policy and practice not to pay PLAINTIFF and other
8 AGGRIEVED EMPLOYEES for all time worked, is evidenced by DEFENDANT's business
9 records.

10 12. State law provides that employees must be paid overtime and meal and rest break
11 premiums at one-and-one-half times their "regular rate of pay." PLAINTIFF and other
12 AGGRIEVED EMPLOYEES are compensated at an hourly rate plus incentive pay that is tied
13 to specific elements of an employee's performance.

14 13. The second component of PLAINTIFF's and other AGGRIEVED EMPLOYEES'
15 compensation is DEFENDANT's non-discretionary incentive program that paid PLAINTIFF
16 and other AGGRIEVED EMPLOYEES incentive wages based on their performance for
17 DEFENDANT. The non-discretionary incentive program provided all employees paid on an
18 hourly basis with incentive compensation when the employees met the various performance
19 goals set by DEFENDANT. However, when calculating the regular rate of pay in order to pay
20 overtime and meal and rest break premiums to PLAINTIFF and other AGGRIEVED
21 EMPLOYEES, DEFENDANT failed to include the incentive compensation as part of the
22 employees' "regular rate of pay" for purposes of calculating overtime pay and meal and rest
23 break premium pay. Management and supervisors described the incentive program to potential
24 and new employees as part of the compensation package. As a matter of law, the incentive
25 compensation received by PLAINTIFF and other AGGRIEVED EMPLOYEES must be
26 included in the "regular rate of pay." The failure to do so has resulted in a underpayment of
27 overtime compensation and meal and rest break premiums to PLAINTIFF and other
28 AGGRIEVED EMPLOYEES by DEFENDANT.

1 14. As a result of their rigorous work schedules, PLAINTIFF and other AGGRIEVED
2 EMPLOYEES are from time to time unable to take thirty (30) minute off duty meal breaks and
3 are not fully relieved of duty for their meal periods. PLAINTIFF and other AGGRIEVED
4 EMPLOYEES are required from time to time to perform work as ordered by DEFENDANT for
5 more than five (5) hours during some shifts without receiving a meal break. Further,
6 DEFENDANT from time to time fails to provide PLAINTIFF and other AGGRIEVED
7 EMPLOYEES with a second off-duty meal period for some workdays in which these employees
8 are required by DEFENDANT to work ten (10) hours of work. DEFENDANT also engages in
9 the practice of rounding the meal period times to avoid paying penalties to PLAINTIFF and
10 other AGGRIEVED EMPLOYEES. PLAINTIFF and other AGGRIEVED EMPLOYEES
11 therefore forfeit meal breaks without additional compensation and in accordance with
12 DEFENDANT's corporate policy and practice.

13 15. During the PAGA PERIOD, PLAINTIFF and other AGGRIEVED EMPLOYEES
14 are also required from time to time to work in excess of four (4) hours without being provided
15 ten (10) minute rest periods. Further, these employees are denied their first rest periods of at
16 least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours from time to
17 time, a first and second rest period of at least ten (10) minutes for some shifts worked of
18 between six (6) and eight (8) hours from time to time, and a first, second and third rest period
19 of at least ten (10) minutes for some shifts worked of ten (10) hours or more from time to time.
20 PLAINTIFF and other AGGRIEVED EMPLOYEES are also not provided with one hour wages
21 in lieu thereof. DEFENDANT failed to compensate PLAINTIFF and other AGGRIEVED
22 EMPLOYEES for their rest periods as required by the applicable Wage Order and Labor Code.
23 DEFENDANT did not have a policy or practice which paid for off-duty rest periods to
24 PLAINTIFF and the other AGGRIEVED EMPLOYEES. As a result, DEFENDANT's failure
25 to provide PLAINTIFF and the AGGRIEVED EMPLOYEES with all the legally required paid
26 rest periods is evidenced by DEFENDANT's business records. Additionally, the applicable
27 California Wage Order requires employers to provide employees with off-duty rest periods,
28 which the California Supreme Court defined as time during which an employee is relieved from

1 all work related duties and free from employer control. In so doing, the Court held that the
2 requirement under California law that employers authorize and permit all employees to take rest
3 period means that employers must relieve employees of all duties and relinquish control over
4 how employees spend their time which includes control over the locations where employees
5 may take their rest period. Employers cannot impose controls that prohibit an employee from
6 taking a brief walk - five minutes out, five minutes back. Here, DEFENDANT's policy restricts
7 PLAINTIFF and other AGGRIEVED EMPLOYEES from unconstrained walks and is unlawful
8 based on DEFENDANT's rule which states PLAINTIFF and other AGGRIEVED
9 EMPLOYEES cannot leave the work premises during their rest period.

10 16. During the PAGA PERIOD, DEFENDANT fails to accurately record and pay
11 PLAINTIFF and other AGGRIEVED EMPLOYEES for the actual amount of time these
12 employees work. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT
13 is required to pay PLAINTIFF and other AGGRIEVED EMPLOYEES for all time worked,
14 meaning the time during which an employee was subject to the control of an employer,
15 including all the time the employee was permitted or suffered to permit this work.
16 DEFENDANT requires these employees to work off the clock without paying them for all the
17 time they are under DEFENDANT's control. As such, DEFENDANT knew or should have
18 known that PLAINTIFF and the other AGGRIEVED EMPLOYEES are under compensated for
19 all time worked. As a result, PLAINTIFF and other AGGRIEVED EMPLOYEES forfeit time
20 worked by working without their time being accurately recorded and without compensation at
21 the applicable minimum wage and overtime wage rates. To the extent that the time worked off
22 the clock does not qualify for overtime premium payment, DEFENDANT fails to pay minimum
23 wages for the time worked off-the-clock in violation of Cal. Lab. Code §§ 1194, 1197, and
24 1197.1.

25 17. From time to time, DEFENDANT also fails to provide PLAINTIFF and other
26 AGGRIEVED EMPLOYEES with complete and accurate wage statements which failed to
27 show, among other things, the correct gross and net wages earned. Cal. Lab. Code § 226
28 provides that every employer shall furnish each of his or her employees with an accurate

1 itemized wage statement in writing showing, among other things, gross wages earned and all
2 applicable hourly rates in effect during the pay period and the corresponding amount of time
3 worked at each hourly rate. Additionally, DEFENDANT violates Cal. Lab. Code 226(a)(8) by
4 failing to list the correct legal entity that employs PLAINTIFF and other AGGRIEVED
5 EMPLOYEES and the correct address for the legal entity. Additionally, PLAINTIFF and other
6 AGGRIEVED EMPLOYEES were paid on an hourly basis. As such, the wage statements
7 should reflect all applicable hourly rates during the pay period and the total hours worked, and
8 the applicable pay period in which the wages were earned pursuant to California Labor Code
9 Section 226(a). The wage statements Defendant provided to PLAINTIFF and AGGRIEVED
10 EMPLOYEES failed to identify such information. More specifically, the wage statements failed
11 to identify the accurate total hours worked each pay period in violation of Cal. Lab. Code
12 Section 226(a)(2). When the hours shown on the wage statements were added up, they did not
13 equal the actual total hours worked during the pay period. Aside, from the violations listed
14 above in this paragraph, DEFENDANT fails to issue to PLAINTIFF an itemized wage
15 statement that lists all the requirements under California Labor Code 226 *et seq.* As a result,
16 DEFENDANT from time to time provides PLAINTIFF and other AGGRIEVED EMPLOYEES
17 with wage statements which violated Cal. Lab. Code § 226.

18 18. Cal. Lab. Code § 204(d) provides, the requirements of this section shall be
19 deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the
20 wages are paid not more than seven calendar days following the close of the payroll period.

21 Cal. Lab. Code § 210 provides:

22 [I]n addition to, and entirely independent and apart from, any other penalty provided in
23 this article, every person who fails to pay the wages of each employee as provided in
24 Sections. . . 204. . . shall be subject to a civil penalty as follows: (1) For any initial
25 violation, one hundred dollars (\$100) for each failure to pay each employee; (2) For each
subsequent violation, or any willful or intentional violation, two hundred dollars (\$200)
for each failure to pay each employee, plus 25 percent of the amount unlawfully
withheld.

26 19. DEFENDANT from time to time fails to pay PLAINTIFF and other
27 AGGRIEVED EMPLOYEES within seven (7) days of the close of the payroll period in
28 accordance with Cal. Lab. Code § 204(d), including but not limited to the “Retro Pay Flat” wage

1 payment.

2 20. DEFENDANT underpays sick pay wages to PLAINTIFF and other AGGRIEVED
3 EMPLOYEES by failing to pay such wages at the regular rate of pay in violation of Cal. Lab.
4 Code Section 246. Specifically, PLAINTIFF and other non-exempt employees earn non-
5 discretionary remuneration, including but not limited to, incentives, shift differential pay, and
6 bonuses. Rather than pay sick pay at the regular rate of pay, DEFENDANT underpays sick pay
7 to PLAINTIFF and other AGGRIEVED EMPLOYEES at their base rates of pay.

8 21. Cal. Lab. Code Section 246(1)(2) requires that paid sick time for non-exempt
9 employees be calculated by dividing the employee's total wages, not including overtime
10 premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days
11 of employment.

12 22. DEFENDANT violated Cal. Lab. Code Section 246 by failing to pay sick pay at
13 the regular rate of pay. PLAINTIFF and other AGGRIEVED EMPLOYEES routinely earned
14 non-discretionary incentive wages, including but not limited to, incentives, shift differential pay,
15 and bonuses, which increased their regular rate of pay. However, when sick pay was paid, it was
16 paid at the base rate of pay for PLAINTIFF and other AGGRIEVED EMPLOYEES, as opposed
17 to the correct, higher regular rate of pay, as required under Cal. Lab. Code Section 246.

18 23. As a pattern and practice, DEFENDANT regularly failed to pay PLAINTIFF and
19 other AGGRIEVED EMPLOYEES their correct wages and accordingly owe waiting time
20 penalties pursuant to Cal. Lab. Code Section 203. Further, PLAINTIFF is informed and believes
21 and based thereon alleges that such failure to pay sick pay at regular rate was willful, such that
22 PLAINTIFF and other AGGRIEVED EMPLOYEES whose employment has separated are
23 entitled to waiting time penalties pursuant to Cal. Lab. Code Sections 201-203.

24 24. Pursuant to Cal. Lab. Code Section 221, "It shall be unlawful for any employer
25 to collect or receive from an employee any part of wages theretofore paid by said employer to
26 said employee." DEFENDANT fails to pay all compensation due to PLAINTIFF and other
27 AGGRIEVED EMPLOYEES, makes unlawful deductions from compensation payable to
28 PLAINTIFF and other AGGRIEVED EMPLOYEES, fails to disclose all aspects of the

1 deductions from compensation payable to PLAINTIFF and other AGGRIEVED EMPLOYEES,
2 and thereby fails to pay these employees all wages due at each applicable pay period and upon
3 termination.

4 25. DEFENDANT intentionally and knowingly fails to reimburse and indemnify
5 PLAINTIFF and the other AGGRIEVED EMPLOYEES for required business expenses
6 incurred by the PLAINTIFF and other AGGRIEVED EMPLOYEES in direct consequence of
7 discharging their duties on behalf of DEFENDANT. Under California Labor Code Section
8 2802, employers are required to indemnify employees for all expenses incurred in the course
9 and scope of their employment. Cal. Lab. Code § 2802 expressly states that "an employer shall
10 indemnify his or her employee for all necessary expenditures or losses incurred by the employee
11 in direct consequence of the discharge of his or her duties, or of his or her obedience to the
12 directions of the employer, even though unlawful, unless the employee, at the time of obeying
13 the directions, believed them to be unlawful."

14 26. In the course of their employment PLAINTIFF and other AGGRIEVED
15 EMPLOYEES as a business expense, are required by DEFENDANT to use their own personal
16 cellular phones as a result of and in furtherance of their job duties as employees for
17 DEFENDANT but are not reimbursed or indemnified by DEFENDANT for the cost associated
18 with the use of their personal cellular phones for DEFENDANT's benefit. Specifically,
19 PLAINTIFF and other AGGRIEVED EMPLOYEES are required by DEFENDANT to use their
20 personal cellular phones. As a result, in the course of their employment with DEFENDANT,
21 PLAINTIFF and other AGGRIEVED EMPLOYEES incurred unreimbursed business expenses
22 which included, but were not limited to, costs related to the use of their personal cellular phones
23 all on behalf of and for the benefit of DEFENDANT.

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

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1 satisfy the requirements and exhaust the administrative procedures under the Private
2 Attorney General Act, brings this Representative Action on behalf of the State of California
3 with respect to herself and all individuals who are or previously were employed by
4 DEFENDANT in California and who were classified as non-exempt employees
5 ("AGGRIEVED EMPLOYEES") during the time period of September 15, 2020 until a date
6 as determined by the Court (the "PAGA AGGRIEVED EMPLOYEES").

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

15 34. The policies, acts and practices heretofore described were and are an unlawful
16 business act or practice because DEFENDANT (a) failed to provide PLAINTIFF and the
17 other AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to
18 properly record and provide legally required meal and rest periods, (c) failed to pay
19 minimum wages, (d) failed to pay overtime and sick pay wages, and (e) failed to reimburse
20 employees for required expenses, all in violation of the applicable Labor Code sections
21 listed in Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 221, 226(a), 226.7, 227.3, 351, 510,
22 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8,
23 Section 11040, Subdivision 5(A)-(B), and the applicable Wage Order(s), and thereby gives
24 rise to civil penalties as a result of such conduct.¹ PLAINTIFF hereby seeks recovery of
25 only civil penalties as prescribed by the Labor Code Private Attorney General Act of 2004
26 as the representative of the State of California for the illegal conduct perpetrated on

27 ¹Plaintiff specifically excludes and/or does not allege any claims under California Labor
28 Code §558(a)(3).

1 PLAINTIFF and the other AGGRIEVED EMPLOYEES.

2
3 **PRAYER FOR RELIEF**

4 WHEREFORE, PLAINTIFF prays for judgment against each Defendant, jointly and
5 severally, as follows:

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

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

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

12 Dated: December 6, 2021 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW
13 LLP

14
15 By: /s/ Norman Blumenthal
16 Norman B. Blumenthal
17 Attorneys for Plaintiff
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