

1 **BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP**

Norman B. Blumenthal (State Bar #068687)

2 Kyle R. Nordrehaug (State Bar #205975)

Aparajit Bhowmik (State Bar #248066)

3 Nicholas J. De Blouw (State Bar #280922)

2255 Calle Clara

4 La Jolla, CA 92037

Telephone: (858)551-1223

5 Facsimile: (858) 551-1232

Website: www.bamlawca.com

6 Attorneys for Plaintiff

7 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

8 **IN AND FOR THE COUNTY SAN BENITO**

10 TERESA TATARAKIS, on behalf of the
11 State of California, as a private attorney
12 general,

13 Plaintiff,

14 vs.

15 THE NEIL JONES FOOD COMPANY, a
16 Corporation; and DOES 1 through 50,
17 inclusive,

18 Defendants.

Case No. **CU-22-00009**

REPRESENTATIVE ACTION
COMPLAINT FOR:

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

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BENITO

JAN 13 2022

BY Leesa M. Rivera
DEPUTY CLERK

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

6 **INTRODUCTION**

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

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

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

22 **THE PARTIES**

23 4. Defendant The Neil Jones Food Company (“DEFENDANT”) is a corporation that
24 at all relevant times mentioned herein conducted and continues to conduct substantial business
25 in the state of California.

26 5. DEFENDANT processes fresh-packed Pacific Northwest Fruit and California
27 Tomatoes.
28

1 6. PLAINTIFF was employed by DEFENDANT in California from August of 2016
2 to August of 2021 and was at all times classified by DEFENDANT as a non-exempt employee,
3 paid on an hourly basis, and entitled to the legally required meal and rest periods and payment
4 of minimum and 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 October 8, 2020 until a date as determined by the Court (the "PAGA PERIOD").

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

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

28 10. The agents, servants and/or employees of the Defendants and each of them acting

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

8 9 THE CONDUCT

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

1 and symptom questionnaires for COVID-19 screening prior to clocking into DEFENDANT's
2 timekeeping system for the workday. As a result, PLAINTIFF and other AGGRIEVED
3 EMPLOYEES forfeit minimum wage, overtime wage compensation, and off-duty meal breaks
4 by working without their time being correctly recorded and without compensation at the
5 applicable rates. DEFENDANT's policy and practice not to pay PLAINTIFF and other
6 AGGRIEVED EMPLOYEES for all time worked, is evidenced by DEFENDANT's business
7 records.

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

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

27 14. As a result of their rigorous work schedules, PLAINTIFF and other AGGRIEVED
28 EMPLOYEES were from time to time unable to take thirty (30) minute off duty meal breaks

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

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

1 DEFENDANT's rule which states PLAINTIFF and other AGGRIEVED EMPLOYEES cannot
2 leave the work premises during their rest period.

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

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

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

4 Cal. Lab. Code § 210 provides:

5 [I]n addition to, and entirely independent and apart from, any other penalty provided in
6 this article, every person who fails to pay the wages of each employee as provided in
7 Sections. . . .204. . . shall be subject to a civil penalty as follows: (1) For any initial
8 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.

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

13 20. DEFENDANT underpaid sick pay wages to PLAINTIFF and other AGGRIEVED
14 EMPLOYEES by failing to pay such wages at the regular rate of pay in violation of Cal. Lab.
15 Code Section 246. Specifically, PLAINTIFF and other non-exempt employees earn non-
16 discretionary remuneration. Rather than pay sick pay at the regular rate of pay, DEFENDANT
17 underpaid sick pay to PLAINTIFF and other AGGRIEVED EMPLOYEES at their base rates
18 of pay.

19 21. Cal. Lab. Code Section 246(1)(2) requires that paid sick time for nonexempt
20 employees be calculated by dividing the employee’s total wages, not including overtime
21 premium pay, by the employee’s total hours worked in the full pay periods of the prior 90 days
22 of employment.

23 22. DEFENDANT violated Cal. Lab. Code Section 246 by failing to pay sick pay at
24 the regular rate of pay. PLAINTIFF and other AGGRIEVED EMPLOYEES routinely earned
25 non-discretionary incentive wages which increased their regular rate of pay. However, when
26 sick pay was paid, it was paid at the base rate of pay for PLAINTIFF and other AGGRIEVED
27 EMPLOYEES, as opposed to the correct, higher regular rate of pay, as required under Cal. Lab.
28 Code Section 246.

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

7 24. Pursuant to Cal. Lab. Code Section 221, "It shall be unlawful for any employer
8 to collect or receive from an employee any part of wages theretofore paid by said employer to
9 said employee." DEFENDANT failed to pay all compensation due to PLAINTIFF and other
10 AGGRIEVED EMPLOYEES, made unlawful deductions from compensation payable to
11 PLAINTIFF and other AGGRIEVED EMPLOYEES, failed to disclose all aspects of the
12 deductions from compensation payable to PLAINTIFF and other AGGRIEVED EMPLOYEES,
13 and thereby failed to pay these employees all wages due at each applicable pay period and upon
14 termination.

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

25 26. In the course of their employment PLAINTIFF and other AGGRIEVED
26 EMPLOYEES as a business expense, were required by DEFENDANT to use their own personal
27 cellular phones as a result of and in furtherance of their job duties as employees for
28 DEFENDANT but are not reimbursed or indemnified by DEFENDANT for the cost associated

1 with the use of their personal cellular phones for DEFENDANT's benefit. Specifically,
2 PLAINTIFF and other AGGRIEVED EMPLOYEES were required by DEFENDANT to use
3 their personal cellular phones. As a result, in the course of their employment with
4 DEFENDANT, PLAINTIFF and other AGGRIEVED EMPLOYEES incurred unreimbursed
5 business expenses which included, but were not limited to, costs related to the use of their
6 personal cellular phones all on behalf of and for the benefit of DEFENDANT.

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

12 **JURISDICTION AND VENUE**

13 28. This Court has jurisdiction over this Action pursuant to California Code of Civil
14 Procedure, Section 410.10.

15 29. Venue is proper in this Court pursuant to California Code of Civil Procedure,
16 Sections 395.5 and 393, because DEFENDANT operates in locations across California,
17 employs AGGRIEVED EMPLOYEES across California, including in this County, and
18 committed the wrongful conduct herein alleged in this County against AGGRIEVED
19 EMPLOYEES.

20 **FIRST CAUSE OF ACTION**

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

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

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

24 30. PLAINTIFF realleges and incorporates by this reference, as though fully set
25 forth herein, the prior paragraphs of this Complaint.

26 31. PAGA is a mechanism by which the State of California itself can enforce state
27 labor laws through the employee suing under the PAGA who do so as the proxy or agent of
28 the state's labor law enforcement agencies. An action to recover civil penalties under

1 PAGA is fundamentally a law enforcement action designed to protect the public and not to
2 benefit private parties. The purpose of the PAGA is not to recover damages or restitution,
3 but to create a means of "deputizing" citizens as private attorneys general to enforce the
4 Labor Code. In enacting PAGA, the California Legislature specified that "it was ... in the
5 public interest to allow aggrieved employees, acting as private attorneys general to recover
6 civil penalties for Labor Code violations ..." Stats. 2003, ch. 906, § 1. Accordingly, PAGA
7 claims cannot be subject to arbitration.

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

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

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

1 226.7, 227.3, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of
2 Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), and the applicable Wage
3 Order(s), and thereby gives rise to civil penalties as a result of such conduct.¹ PLAINTIFF
4 hereby seeks recovery of only civil penalties as prescribed by the Labor Code Private
5 Attorney General Act of 2004 as the representative of the State of California for the illegal
6 conduct perpetrated on PLAINTIFF and the other AGGRIEVED EMPLOYEES.

7
8 **PRAYER FOR RELIEF**

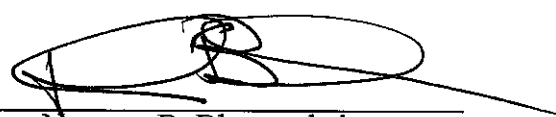
9 WHEREFORE, PLAINTIFF prays for judgment against each Defendant, jointly and
10 severally, as follows:

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

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

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

17 Dated: January 12, 2022 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW
18 LLP

19
20 By: 

21 Norman B. Blumenthal
22 Attorneys for Plaintiff
23
24
25
26

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