

**FILED/ENDORSED**

**MAY 31 2022**

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Deputy Clerk

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Attorneys for Plaintiffs Tim Botonis, Liam Patrick Meikle, and Putative Class

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**IN AND FOR THE COUNTY OF SACRAMENTO – UNLIMITED JURISDICTION**

TIM BOTONIS, LIAM PATRICK MEIKLE,  
on behalf of themselves and all others similarly  
situated,

Plaintiffs,

v.

BIMBO BAKERIES USA, INC.; and DOES  
ONE through TEN,

Defendants.

Case No. 34-2022-319624

**AMENDED CLASS ACTION COMPLAINT  
FOR:**

1. Failure to Reimburse Business Expenses  
[Lab. Code § 2802];
2. Failure to Provide Accurate Itemized  
Wage Statements  
[Lab. Code §§ 226, 1174, IWC Wage  
Order No. 9-2001];
3. Failure to Pay Wages Upon  
Termination/Severance of Employment  
[Lab. Code §§ 201, 202, 203];
4. Unfair Competition and Unfair Business  
Practices  
[Bus. & Prof. Code §§ 17200, *et seq.*];
5. Representative Complaint for Penalties  
on Behalf of Aggrieved Employees  
Pursuant to the Private Attorneys  
General Act  
[Lab. Code §§ 2699, *et seq.*].

**FILED BY FAX**

**DEMAND FOR JURY TRIAL** [Code Civ.  
Proc. § 631].

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1 Plaintiffs TIM BOTONIS and LIAM PATRICK MEIKLE (“Plaintiffs”), on behalf of  
2 themselves and others similarly situated, allege as follows:

3 **INTRODUCTION**

4 1. Plaintiffs bring this Complaint, on behalf of themselves and on behalf of all those  
5 similarly situated that are presently or formerly employed by Defendant BIMBO BAKERIES USA,  
6 INC. (“Defendant” or “BBU”) within the State of California. Defendant employs Plaintiffs and the  
7 putative Class Members as (a) delivery drivers (including relief drivers) and (b) route salespersons.

8 2. Plaintiffs seek to remedy Defendant’s refusal to reimburse employees for business  
9 expenses, to provide accurate itemized wage statements, and to pay all wages due upon termination.  
10 Plaintiffs further seek to remedy Defendants’ unfair business practices and seek relief through a  
11 representative complaint pursuant to the Private Attorneys General Act (“PAGA”).

12 3. Defendant and Does ONE through TEN jointly employ Plaintiffs and the putative  
13 Class Members and are jointly and severally liable to Plaintiffs for violations of state wage and hour  
14 laws. Through this Complaint, Plaintiffs seek on behalf of themselves and others similarly situated,  
15 compensation for unpaid business expenses, statutory penalties, attorneys’ fees and costs of suit, and  
16 any other remedy available under the law and deemed appropriate by this Court.

17 **VENUE / JURISDICTION**

18 4. Defendant is a Delaware corporation that maintains its headquarters in Horsham,  
19 Pennsylvania.

20 5. Plaintiffs and the putative Class Members are and were employed as delivery drivers  
21 (including relief drivers) and route salespersons at BBU depots throughout California. The named  
22 Plaintiffs are employed at Defendant’s Sacramento depot in Sacramento County, California.

23 6. Pursuant to Code of Civil Procedure sections 395 and 395.5 venue is proper in this  
24 Court as a substantial portion of the acts and/or omissions complained of giving rise to Defendant’s  
25 liability took place within the County of Sacramento.

26 7. This is an unlimited civil action as the alleged damages exceed \$25,000.00.

27 8. Plaintiffs complied with the requirements of Labor Code section 2699.3(a) by giving  
28 written notice to the Labor Workforce Development Agency (“LWDA”) and Defendants of the

specific provisions of the Labor Code alleged to have been violated, including the facts and theories to support each allegation.

### **PARTIES**

9. Plaintiff Tim Botonis is, and at all times relevant herein was, a resident of Sacramento County, California. Plaintiff is employed by Defendant as a route salesperson at Defendant's facility in Sacramento.

10. Plaintiff Liam Patrick Meikle is, and at all times relevant herein was, a resident of Placer County, California. Plaintiff is employed by Defendant as a delivery driver at Defendant's facility in Sacramento.

11. Defendant Bimbo Bakeries USA, Inc. is a Delaware corporation engaged in the manufacturing, sale, and distribution of baked goods to grocery stores.

12. Plaintiffs are ignorant of the true names and capacities, whether individual, corporate, associate, or otherwise, of the defendants sued in this action as DOES ONE through TEN, inclusive, and therefore sues the defendants by the use of fictitious names, pursuant to Code of Civil Procedure section 474. Plaintiffs will seek leave to amend the Complaint to allege the Does' true names and capacities when ascertained, together with appropriate charging allegations, where necessary. Plaintiffs are informed and believe that each of the fictitiously named defendants is responsible in some manner for the occurrences alleged, and that Plaintiffs' and the Class' damages as alleged herein were caused by the Defendant and the Doe defendants, and each of them.

### **GENERAL ALLEGATIONS**

13. At all times relevant herein, Defendant employed Plaintiff Botonis and the putative Class Members as route salespersons. Route salespersons are required to prepare and coordinate orders of Defendant's products for delivery.

14. At all times relevant herein, Defendant employed Plaintiff Meikle and the putative Class Members as delivery drivers. Drivers are responsible for delivering Defendant's products to Defendant's customers.

15. All Plaintiffs and the putative Class Members are regularly required to use their personal cell phones for work purposes, including to communicate regarding the ordering and

1 delivery of the Defendant's products. All Plaintiffs and the putative Class are required to be available  
2 by their cell phone and will receive communications about work issues through their personal cell  
3 phones. BBU may discipline the Plaintiffs and putative Class Members for failing to communicate or  
4 respond to communications on their personal cell phones. Failure by the Plaintiffs to communicate  
5 over their cell phone may lead to discipline.

6 16. Route salespersons must use their personal cell phones on a day-to-day basis to  
7 communicate with other supervisors and salespersons regarding lost or missing products, adjustments  
8 to orders, or adding stops to routes. Each morning, route salespersons will get a list of products that  
9 are either over or short, which is entered into a handheld device. However, if product is missing from  
10 an order, or there is an issue with the order, supervisors and other route salespersons will have to  
11 communicate over personal cell phones with each other to make adjustments to the order. The  
12 Defendant's supervisors will provide a route salesperson's cell phone number to other employees.

13 17. The salespersons also communicate with customers regarding their orders and are  
14 required to use their personal cell phones to contact customers. Moreover, salespersons also work as  
15 relief drivers and cover a delivery driver's route if the driver is on leave. In order to work as a relief  
16 driver, the salespersons must be available on their cell phone to cover routes.

17 18. Delivery drivers must use their personal cell phones on a day-to-day basis to  
18 communicate with other drivers and supervisors regarding missing products, adding routes or  
19 products to a delivery, getting access to certain facilities, and other matters pertaining to the delivery  
20 of products. Supervisors regularly call drivers on their personal cell phones and require the drivers to  
21 communicate with other drivers to complete deliveries. Given that there is no other communication  
22 device in the delivery vehicles, the drivers are compelled to use their personal cell phones to  
23 communicate with each other. The Defendant's foremen or supervisors will provide a driver's  
24 personal cell phone number to other employees.

25 19. Defendant failed to reimburse Plaintiffs and the putative Class Members for the use of  
26 their personal cell phones, which was necessary for the discharge of their duties for the Defendant.

27 20. Defendant failed to provide wages to Plaintiffs and the putative Class in a written  
28 statement containing all information required by California law. As a result, Defendant failed to

1 provide Plaintiffs and the putative Class with an itemized wage statement containing the requisite  
2 information and detail. Specifically, Defendant failed to provide wage statements accurately  
3 reflecting the total compensation that employees received, including costs of reimbursement, as  
4 required under California law.

5 21. Plaintiffs and the putative Class Members were injured by this failure, as they were  
6 unable to confirm the accuracy – or lack of accuracy – of the wages paid to them.

7 22. Defendant failed to promptly pay all wages owed to members of the putative Class  
8 upon termination or severance of their employment.

9 **CLASS ACTION ALLEGATIONS**

10 23. Plaintiffs assert various causes of action on behalf of themselves and other employees  
11 pursuant to Code of Civil Procedure section 382. Plaintiffs seek to represent a class generally  
12 composed of all current and former drivers (including relief drivers) and route salespersons, (“the  
13 Class” or “putative Class Members”) who are or have been employed by Defendant in the State of  
14 California and to whom Defendant has failed to (a) reimburse for business expenses; (b) provide  
15 accurate itemized wage statements; and (c) pay wages upon termination or severance of employment  
16 at any time for four (4) years prior to the original filing of this lawsuit and continuing through the  
17 date of judgment in this action related to the allegations set forth above regarding the use of personal  
18 cell phones.

19 24. Plaintiffs further seek to represent two Subclasses composed of the drivers (“Driver  
20 Subclass”) and the route salespersons (“Sales Subclass”) who are or have been employed by  
21 Defendant in the State of California and to whom Defendant has failed to (a) reimburse for business  
22 expenses; (b) provide accurate itemized wage statements; and (c) pay wages upon termination or  
23 severance of employment at any time for four (4) years prior to the original filing of this lawsuit and  
24 continuing through the date of judgment in this action related to the allegations set forth above  
25 regarding the use of personal cell phones.

26 25. Plaintiffs reserve the right under California Rules of Court, rules 3.674 and 3.765, to  
27 amend or modify the Class descriptions with greater particularity or further division into subclasses  
28 or limitation to particular issues. The causes of action asserted on behalf of the putative Class have

1 been brought and may properly be maintained as a class action under the provisions of Code of Civil  
2 Procedure section 382 because there is a well-defined community of interest in the litigation and the  
3 Class is easily ascertainable.

4         26.     **Numerosity:** The putative Class Members, as defined, are so numerous that joinder of  
5 all the members of the class is impracticable. While the precise number of putative Class Members  
6 has not been determined at this time, Plaintiffs are informed and believe that Defendant and Does one  
7 through ten jointly employed at least 1,000 Class Members in the State, and Plaintiffs estimate that  
8 there may be hundreds or thousands more similarly situated Class Members throughout the State of  
9 California during the relevant time period. Plaintiffs allege that Defendant's employment records  
10 will provide information as to the number and location of each putative Class Member.

11         27.     **Commonality:** There are questions of law and fact common to the putative Class that  
12 predominate over any questions affecting only individual putative Class Members. These common  
13 questions of law and fact include:

14             a.     Whether Defendant's pay practices conformed to the requirements of the Labor Code  
15 and applicable Industrial Welfare Commission Wage Order No. 9-2001;

16             b.     Whether Defendant failed to reimburse Plaintiffs and putative Class Members for  
17 business expenses;

18             c.     Whether Defendant failed to provide Plaintiffs and the putative Class Members  
19 accurate itemized wage statements;

20             d.     Whether Defendant paid all wages owed to severed or terminated employees in a  
21 timely manner upon termination;

22             e.     Whether Defendant violated California Business & Professions Code sections 17200,  
23 *et seq.*, by failing to reimburse business expenses;

24             f.     The nature and extent of monetary and equitable relief necessary to remedy  
25 Defendant's unfair and unlawful conduct as herein alleged; and

26             g.     Other questions of law and fact.

27         28.     **Typicality:** The claims of the named Plaintiffs are typical of the claims of the  
28 proposed Class. Plaintiffs and putative Class Members sustained injuries and damages arising out of

1 and caused by Defendant's common course of conduct in violation of statutes, as well as regulations  
2 that have the force and effect of law, as alleged herein.

3 29. **Ascertainability:** The proposed Class Members are readily identifiable through  
4 Defendant's personnel and payroll records, which by law are required to contain employee name and  
5 address. Defendant should have in its possession sufficient information to locate and notify potential  
6 Class Members.

7 30. **Adequacy of Representation:** Plaintiffs will fairly and adequately represent and  
8 protect the interests of putative Class Members. Counsel representing Plaintiffs are experienced and  
9 competent in litigating employment class actions.

10 31. **Superiority of Class Action:** A class action is superior to other available means for  
11 the fair and efficient adjudication of this controversy. Individual joinder of all putative Class  
12 Members is not practicable, and questions of law and fact common to the Class predominate over any  
13 questions affecting only individual members of the Class. Each putative Class Member has been  
14 damaged and is entitled to recovery because of Defendant's illegal wage-and-hour policies or  
15 practices alleged above. Class action treatment will allow those persons similarly situated to litigate  
16 their claims in the manner that is most efficient and economical for the parties and the judicial  
17 system. Further, the prosecution of separate actions against Defendant by individual putative Class  
18 Members would create a risk of inconsistent or varying adjudications that would establish  
19 incompatible standards of conduct for Defendant. Plaintiffs are unaware of any difficulties in  
20 managing this case that should preclude class action.

21 **FIRST CAUSE OF ACTION**  
22 **Failure to Reimburse Business Expenses**  
23 **(Labor Code § 2802)**

24 32. Plaintiffs re-allege and incorporate by reference the allegations in the preceding  
25 paragraphs, as though fully set forth herein.

26 33. At all times material hereto, Labor Code section 2802(a) provides that an employer  
27 must indemnify and reimburse employees for all necessary expenditures and losses incurred by  
28 employees in the discharge of their duties, or their obedience to the directions of an employer.

1           34.     Plaintiffs and the putative Class incurred necessary expenditures in the discharge of  
2 their duties for Defendant, including but not limited to using personal cell phones in order to  
3 communicate with other employees for the purpose of delivering the Defendant's products.

4           35.     Defendant is aware of the policies and/or practices that require Plaintiffs and the  
5 putative Class Members to use their personal cell phones because the Defendant's policies and work  
6 rules require Plaintiffs and the putative Class Members to communicate with each other using their  
7 personal cell phones, the Defendant's vehicles are not equipped with devices to facilitate  
8 communications between the employees, the Defendant provides the delivery drivers and route  
9 salespersons with other employees' cell phone numbers, and employees may be subject to discipline  
10 if they fail to communicate with each other.

11          36.     Each of these expenditures was required by Defendant and necessary for Plaintiffs and  
12 the putative Class to discharge their duties. Despite the requirements of Labor Code section 2802,  
13 Defendant failed to reimburse Plaintiffs and the putative Class for these expenditures.

14          37.     As a direct result of Defendant's conduct alleged herein, Plaintiffs and the putative  
15 Class Members have suffered monetary damages in an amount equal to the sum of their  
16 unreimbursed expenditures or losses incurred in the discharge of their duties, plus interest thereon.

17                   **SECOND CAUSE OF ACTION**

18                   **Failure to Provide Accurate Itemized Wage Statements**  
19                   **(Labor Code §§ 226, 1174, Industrial Welfare Commission Wage Order No. 9-2001)**

20          38.     Plaintiffs re-allege and incorporate by reference the allegations in the preceding  
21 paragraphs, as though fully set forth herein.

22          39.     Every employee of Defendant, during the applicable limitations period, was entitled to  
23 a fully compliant accurate itemized wage statement for each work period as required by Labor Code  
24 section 226. Defendant uniformly and systematically violated Labor Code section 226 as to the  
25 itemized wage statements for all of Defendant's employees for periods in which employees were not  
26 reimbursed for costs.

27          40.     Defendant knowingly and intentionally failed to furnish accurate wage statements to  
28 Plaintiffs and the putative Class, which displayed the wages set forth above. Each violation is  
presumed to have caused injury to Plaintiffs and the Class Members, by, among other things,

1 impeding them from knowing the amount of wages to which they are and were lawfully entitled. At  
2 all times relevant herein, it is alleged that Defendant failed to maintain appropriate records as  
3 required under Labor Code section 1174, and Industrial Welfare Commission Wage Order 9-2001,  
4 section 7.

5 41. Plaintiffs and Class Members are entitled to seek injunctive relief requiring Defendant  
6 to comply with Labor Code sections 226(a) and 1174(d), and further seek the amount provided  
7 under Labor Code sections 226(e) and 1174.5, including the greater of all actual damages or fifty  
8 dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per  
9 employee for each violation in a subsequent pay period, up to a maximum of \$4,000.00 per employee  
10 during the applicable limitations period. Plaintiffs are informed and believe that such violations and  
11 damages require only an examination of records.

12 **THIRD CAUSE OF ACTION**  
13 **Failure to Pay Wages Upon Termination/Severance of Employment**  
14 **(Labor Code §§ 201, 202, 203)**

15 42. Plaintiffs re-allege and incorporate by reference the allegations in the preceding  
16 paragraphs, as though fully set forth herein.

17 43. At all times material hereto, Labor Code sections 201, 202 and 203 have required  
18 employers to pay employees all earned and unpaid wages at the time of their termination/severance  
19 from employment.

20 44. Defendant failed to pay all wages due to Class Members, including the amounts of  
21 business expenses incurred, upon severance from employment and has failed to pay wages owed to  
22 severed employees within the time frames required under the Labor Code.

23 45. Plaintiffs and the putative Class are entitled to recover from Defendant in addition to  
24 their earned and unpaid wages, a penalty under Labor Code section 203 equal to a day's wages for  
25 each day Defendant failed to remit payment to the putative Class upon their severance or termination  
26 of employment, to a maximum of thirty days' wages, plus interest thereon, and attorneys' fees and  
27 costs of suit.

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**FOURTH CAUSE OF ACTION**  
**Unfair Competition and Unfair Business Practices**  
**(Business & Professions Code §§ 17200, *et seq.*)**

46. Plaintiffs re-allege and incorporate by reference the allegations in the preceding paragraphs, as though fully set forth herein.

47. Plaintiffs bring this claim on behalf of themselves, the Class and the general public, pursuant to Business & Professions Code sections 17200, *et seq.* Plaintiffs are “persons” within the meaning of Business & Professions Code section 17204, and therefore, have standing to bring this claim for equitable relief.

48. Business & Professions Code section 17200, *et seq.* provides that unfair competition shall mean and include any “unlawful business act or practice.” The conduct of Defendant, as alleged herein, has and continues to be an unlawful business practice or act deleterious to Plaintiffs and all individuals similarly situated, as well as to the general public. Specifically, since the commencement of their employment, Plaintiffs were not reimbursed for business expenses, were not provided accurate itemized wage statements, and severed or terminated employees were not paid all wages due upon termination, as required by California law. These actions are in violation of the Labor Code and Industrial Welfare Commission Wage Order No. 9-2001.

49. Through this conduct, Defendant has engaged in unlawful and unfair business practices in violation of Business & Professions Code sections 17200, *et seq.*, depriving Plaintiffs and all individuals similarly situated of rights, benefits and privileges guaranteed under the law.

50. As a direct result of Defendant’s conduct as alleged herein, Plaintiffs and the putative Class have been unjustly deprived of costs incurred for business expenses, knowledge of their correct wages worked through an accurate itemized wage statements, and all wages upon termination/severance of employment, as required by law. As a direct result of Defendant’s conduct as alleged herein, Defendant has been unjustly enriched in an amount equal to unpaid wages and unpaid business expenses rendered by Plaintiffs and the putative Class.

51. Business & Professions Code section 17203 provides that the Court may restore to an aggrieved party any money or property acquired by the defendant by unlawful and/or unfair business

1 practices. Plaintiffs are entitled to restitution pursuant to this section, as alleged herein, according to  
2 proof.

3 52. Business & Professions Code section 17204 allows “any person who has suffered  
4 injury in fact and has lost money or property” to prosecute a civil action for violation of the Unfair  
5 Competition Law.

6 53. Pursuant to Business & Professions Code section 17203, injunctive relief is necessary  
7 to prevent Defendant from continuing to engage in the unfair business practices as alleged herein.

8 54. As a result of its unlawful acts, Defendant has reaped and continues to reap unfair  
9 benefits and illegal profits at the expense of Plaintiffs and the putative Class. Defendant should be  
10 enjoined from this activity, caused to specifically perform its obligations and made to disgorge these  
11 ill-gotten gains and pay restitution to Plaintiffs and Class Members including, but not limited to, all  
12 unpaid wages and premium pay, penalties, an injunction and any other appropriate equitable relief.

13 55. Plaintiffs have retained the services of attorneys herein to maintain and prosecute this  
14 action, and Plaintiffs are entitled to recovery of attorneys’ fees incurred on Plaintiffs’ behalf in the  
15 prosecution of this action.

16 **FIFTH CAUSE OF ACTION**  
17 **Private Attorneys General Act Claim for Civil Penalties**  
**(Labor Code §§ 2699, *et seq.*)**

18 56. Plaintiffs re-allege and incorporate by reference the allegations in the preceding  
19 paragraphs, as though fully set forth herein.

20 57. Labor Code section 2699(a) provides that any provision of the Labor Code that  
21 provides for a civil penalty to be assessed and collected by the LWDA may, as an alternative, be  
22 recovered through a civil action brought by an aggrieved employee brought on behalf of his or  
23 herself, or his or herself and other current or former employees.

24 58. Labor Code section 2699(e) provides that for all provisions of the Labor Code except  
25 those for which a civil penalty has been specifically provided, there is established a civil penalty for a  
26 violation of these provisions equal to one hundred (\$100) per pay period for the initial violation of  
27 each provision, and two hundred dollars (\$200) per pay period for each subsequent violation.  
28

59. Labor Code section 2699.3(a) provides that a civil action by an aggrieved employee shall only be commenced after the aggrieved employee has given written notice to the LWDA and the employer(s) of the specific provisions of the code alleged to have been violated, including the facts and theories to support the alleged violation. Plaintiffs have done this.

60. Plaintiffs are “aggrieved employees” under PAGA, as they have been employed by Defendant during the applicable statutory period and suffered one or more of the Labor Code violations alleged herein. Therefore, Plaintiffs seek to recover, on behalf of themselves and all other current and former aggrieved employees of Defendant, the civil penalties provided by PAGA, plus reasonable attorneys’ fees and costs.

61. Plaintiffs seek to recover PAGA civil penalties through a representative action permitted by PAGA. Therefore, class certification of the PAGA claims is not required, but Plaintiffs may choose to seek certification of the PAGA claims.

62. Plaintiffs specifically seek to recover the following civil penalties to redress Defendant' conduct as alleged herein: violations of Labor Code section 2802 for failure to reimburse business expenses; Labor Code sections 226 and 1174 for failure to provide accurate itemized wage statements; and Labor Code sections 201, 202, and 203 for failure to pay wages upon termination.

**DEMAND FOR JURY TRIAL**

63. Plaintiffs hereby demand a jury trial, as provided by Code of Civil Procedure section 631.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs pray for judgment as follows:

1. That this action be certified as a class action under Code of Civil Procedure section 382;
2. That Plaintiffs be appointed as representatives of the Class;
3. That counsel for Plaintiffs be appointed as class counsel;
4. A declaratory judgment that the practices complained of herein are unlawful under California law;
5. An award of damages, liquidated damages, and restitution to be paid by Defendant to Plaintiffs and the Class according to proof;

6. Appropriate statutory penalties;
7. Pre-judgment and post-judgment interest as provided by law;
8. Pursuant to Business and Professions Code sections 17200, *et seq.*, for restitution equal to the sum of unpaid wages to Plaintiffs, according to proof;
9. For penalties pursuant to Labor Code sections 2699, *et seq.*;
10. For an award of attorneys' fees and costs, in an amount the Court determines to be reasonable, as authorized by the Labor Code and other provisions of law;
11. For appropriate injunctive relief; and
12. For such other relief as the Court may deem appropriate.

Dated: May 24, 2022

BEESON, TAYER & BODINE, APC

By:

  
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