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14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

15 **FOR THE COUNTY OF SAN MATEO**

16 SERGIO LOPEZ, on behalf of himself and all  
17 others similarly situated,

18 Plaintiff,

19 v.

20 DAIRYLAND PRODUCE, LLC, a Delaware  
21 Limited Liability Company; and DOES 1-50,  
22 inclusive.

23 Defendants.

CASE NO.: 25-CIV-02406

**PAGA REPRESENTATIVE ACTION  
COMPLAINT:**

(1) **CIVIL PENALTIES UNDER THE  
PRIVATE ATTORNEYS GENERAL  
ACT (LABOR CODE § 2698 *et seq.*)**

**UNLIMITED CIVIL CASE**

Electronically

**FILED**

by Superior Court of California, County of San Mateo

ON

4/3/2025

By /s/ Kimberly Claussen  
Deputy Clerk

1 Plaintiff Sergio Lopez (“Plaintiff”), on behalf of the State of California, hereby brings this  
2 PAGA Representative Action Complaint (“Complaint”) against Defendant Dairyland Produce, LLC  
3 (“Defendant”) and DOES 1 to 50 (collectively “Defendants”) and each of them, as follows:

#### 4 **INTRODUCTION**

5 1. Defendant is a Ridgefield-based company specializing in the distribution of fresh  
6 produce to local businesses and consumers.

7 2. Plaintiff brings this PAGA representative action solely on behalf of the State of  
8 California against Defendant for alleged violations of the California Labor Code.

9 3. **Plaintiff does not seek to recover anything other than penalties as permitted by**  
10 **California Labor Code § 2699.**

11 4. As set forth below, Plaintiff alleges that Defendant failed to pay all overtime  
12 compensation and sick pay wages due to its failure to correctly calculate the “regular rate of pay.”  
13 Moreover, Plaintiff alleges that Defendant’s meal and rest period policies and practices failed to allow  
14 and permit aggrieved employees to take all compliant and timely meal and rest periods or pay  
15 premium wages at the “regular rate of pay” in lieu thereof. Plaintiff further alleges that Defendant  
16 failed to provide aggrieved employees with accurate written itemized wage statements in violation of  
17 Labor Code § 226(a), and failed to reimburse all necessary business expenses incurred.

#### 18 **JURISDICTION**

19 5. Plaintiff, on behalf of the State of California, brings this representative action pursuant  
20 to Labor Code § 2699, *et seq.*, seeking penalties for Defendant’s violation of California Labor Code  
21 §§ 204, 210, 226(a), 226(a)(6), 226(e), 226.3, 226.7, 227.3, 246, 510, 512, 516, 1174, 1174.4, 1199,  
22 2802-2804, and applicable Industrial Welfare Commission Wage Orders (“Wage Orders”).

23 6. Based upon the foregoing, Plaintiff and all aggrieved employees are aggrieved  
24 employees within the meaning of Labor Code §2699, *et seq.*

25 7. This Court has jurisdiction over Defendant because, upon information and belief,  
26 Defendant has sufficient minimum contacts in California, or otherwise intentionally avail themselves  
27 to the State of California so as to render the exercise of jurisdiction over them by California courts  
28 consistent with the traditional notions of fair play and substantial justice.

1 **VENUE**

2 8. Venue is proper in this judicial district pursuant to California Code of Civil Procedure  
3 §§ 395(a) and 395.5, as most of the acts and omissions complained of herein occurred in the County  
4 of San Mateo. Defendant owns, maintains offices, transacts business, has an agent or agents within  
5 the County of San Mateo, and/or otherwise are found within the County of San Mateo, and Defendant  
6 is within the jurisdiction of this Court for purposes of service of process.

7 **PARTIES**

8 9. At all relevant times herein, Plaintiff, who is over 18, was and currently is a California  
9 resident residing in the State of California.

10 10. Plaintiff is informed, believes, and alleges that Defendants are authorized to do  
11 business within the County of San Mateo and is and/or was the legal employer of Plaintiff and the  
12 aggrieved employees during the applicable statutory periods. Plaintiff was, and is, a victim of  
13 Defendants' policies and/or practices complained of herein and has been deprived of the rights  
14 guaranteed to him by California Labor Code §§ 204, 210, 226, 226(a), 226(e), 226.3, 226.7, 227.3,  
15 246, 510, 512, 516, 1174, 1174.4, 1199, 2802-2804, and the California Business and Professions  
16 Code § 17200 *et seq.*, and applicable Wage Orders.

17 11. Plaintiff is informed and believes, and based thereon alleges, that during the four years  
18 preceding the filing of the Complaint and continuing to the present, Defendants did (and continue to  
19 do) business in the State of California, County of San Mateo.

20 12. Plaintiff does not know the true names or capacities, whether individual, partner, or  
21 corporate, of the Defendants sued herein as DOES 1 to 50, inclusive, and for that reason, said  
22 Defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to  
23 amend this Complaint when such true names and capacities are discovered. Plaintiff is informed, and  
24 believes, and thereon alleges, that each of said fictitious Defendants, whether individual, partners, or  
25 corporate, were responsible in some manner for the acts and omissions alleged herein and proximately  
26 caused Plaintiff and the aggrieved employees to be subject to the unlawful employment practices  
27 alleged herein.

28 13. Plaintiff is informed, and believes, and thereon alleges, that at all times mentioned

1 herein, Defendants were and are the employers of Plaintiff and all aggrieved employees. At all times  
2 herein mentioned, each of said Defendants participated in the doing of the acts hereinafter alleged to  
3 have been done by the named Defendants. Furthermore, the Defendants, and each of them, were the  
4 agents, servants, and employees of each and every one of the other Defendants, as well as the agents  
5 of all Defendants, and at all times herein mentioned, were acting within the course and scope of said  
6 agency and employment. Defendants, and each of them, approved of, condoned, and/or otherwise  
7 ratified each and every one of the acts or omissions complained of herein.

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

#### 13 **PAGA REPRESENTATIVE ACTION ALLEGATIONS**

14 15. Defendant is a Ridgefield-based company specializing in the distribution of fresh  
15 produce to local businesses and consumers.

16 16. Plaintiff has been employed by Defendant as a non-exempt employee with the title of  
17 “Inside Sales Associate” since July 23, 2023. Based in Brisbane, California, Plaintiff performed  
18 essential duties as part of his role.

19 17. Plaintiff, along with other aggrieved employees in non-exempt positions—including  
20 but not limited to Truck Driver, Inside Sales Associate, Shift Leader, Shift Engineer, Technician, and  
21 Customer Service Representative—made significant contributions to the daily operations and overall  
22 success of Defendant’s business in California.

23 18. At all relevant times, non-exempt hourly employees were responsible for a wide range  
24 of critical tasks, including driving, sales, customer service, and distribution, which ensured the  
25 smooth and effective operation of Defendant’s business. Despite the essential nature of their work,  
26 Plaintiff and other aggrieved employees allege that Defendant failed to comply with California labor  
27 laws. Specifically, Defendant failed to ensure accurate timekeeping, proper payment of wages, and  
28 the provision of compliant meal and rest periods, as detailed below.

1           19.     At all relevant times, Plaintiff and other aggrieved employees regularly worked  
2 various shifts, many of which were more than 8.0 hours in a workday and 40.0 hours in a workweek.  
3 Plaintiff alleges that other aggrieved employees were also subjected to the same policies, procedures,  
4 practices, working conditions, and corresponding wage and hour violations to which he was subjected  
5 during his employment.

6           20.     First, at all relevant times, Plaintiff and other aggrieved employees worked regular  
7 shifts that lasted longer than 8.0 hours in a workday and resulted in aggrieved employees regularly  
8 working more than 40 hours in a workweek. However, Defendant uniformly failed to properly  
9 calculate and pay overtime wages at the proper legal rate due to Defendant's failure to include all  
10 forms of compensation/remuneration, including, but not limited to, stipends, shift pay, non-  
11 discretionary bonuses, commissions, incentives, and all other forms of remuneration in calculating  
12 the "regular rate of pay" for purposes of overtime compensation.

13           21.     Under the California Labor Code (as well as the FLSA), courts have consistently held  
14 that regularly paid non-discretionary bonuses (and other forms of pay) must be included in  
15 determining an employee's "regular rate of pay" for purposes of calculating overtime. (See *Haber v.*  
16 *The Americana Corp.* 378 F. 2d 854, 855-856 (9th Cir. 1967) [holding that regularly paid efficiency  
17 bonuses must be included in calculating the "regular rate"]; *Wang v. Chinese Daily News, Inc.* 435 F.  
18 Supp. 2d 1042, 1055-1057 (C.D. Cal. 2006) [granting summary judgment to Plaintiff under California  
19 and federal law on the grounds that Defendant improperly calculated overtime by excluding annual  
20 bonuses paid to employees from the "regular rate of compensation"]; see *Walling v. Youngerman-*  
21 *Reynolds Hardwood Co.* (1945) 65 S.Ct. 1242, 1245. ("The regular rate by its very nature must reflect  
22 all payments which the parties have agreed shall be received regularly during the workweek,  
23 exclusive of overtime payments. It is not an arbitrary label chosen by the parties but an actual fact.  
24 Once the parties have decided upon the amount of wages and the mode of payment, the determination  
25 of the regular rate becomes a matter of mathematical computation, the result of which is unaffected  
26 by any designation of a contrary 'regular rate' in the contracts."); see also 29 CFR §§ 778.110  
27 ("production bonus") and 778.111 ("piece-rate").

28           22.     Labor Code § 510 requires an employer to compensate an employee who works more

1 than eight (8.0) hours in one workday, forty (40.0) hours in a workweek, and for the first eight (8.0)  
2 hours worked on the seventh consecutive day, no less than one and one-half times (1 1/2) the regular  
3 rate of pay. In addition, Labor Code § 510 obligates employers to compensate employees at no less  
4 than twice the regular rate of pay when an employee works more than twelve (12.0) hours in a  
5 workday or more than eight (8.0) hours on the seventh consecutive day of work. Pursuant to Section  
6 3 of the applicable Wage Orders, aggrieved employees shall not be employed more than eight (8.0)  
7 hours in any workday or more than 40.0 hours in any workweek unless the employee receives one  
8 and one-half (1 1/2) times such employee's regular rate of pay for all hours worked over 40 hours in  
9 the workweek.

10 23. By their policy of requiring Plaintiff and the other aggrieved employees to work in  
11 excess of eight (8) hours in a workday and/or forty (40) hours in a workweek without compensating  
12 them at the lawful rate of one-half (1 1/2) their "regular rate of pay," Defendant willfully violated the  
13 provisions of Labor Code § 510 and the applicable Wage Orders.

14 24. Accordingly, through PAGA and to the extent permitted by law, Plaintiff and other  
15 aggrieved employees are entitled to recover penalties for violations of Labor Code §§ 204, 210, 510,  
16 1194, 1197.1, 1199 1197.1 under Labor Code § 1197.1, 1199, or Labor Code § 2699(f)(2), and  
17 attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

18 25. Furthermore, at all relevant times, Defendant also failed in its obligation to provide  
19 Plaintiff and other aggrieved employees the legally required paid sick days at the legal rate pursuant  
20 to Labor Code §§ 246(a),(b), which requires that "[a]n employee who, on or after July 1, 2015, works  
21 in California for the same employer for 30 or more days within a year from the commencement of  
22 employment is entitled to paid sick days. . . at the rate of not less than one hour per every 30 hours  
23 worked, beginning at the commencement of employment." Labor Code § 246(l)(1) provides that paid  
24 sick time for aggrieved employees must be "calculated in the same manner as the regular rate of pay  
25 for the workweek in which the employee uses paid sick time, whether or not the employee actually  
26 works overtime in that workweek."

27 26. Additionally, Labor Code § 246(l)(2) states that the paid sick time must be "calculated  
28 by dividing the employee's total wages, not including overtime premium pay, by the employee's total

1 hours worked in the full pay periods of the prior 90 days of employment.” Finally, Labor Code §246(i)  
2 requires employers to “provide an employee with written notice that sets forth the amount of paid  
3 sick leave available, or paid time off leave an employer provides in lieu of sick leave, for use on either  
4 the employee’s itemized wage statement described in Section 226 or in a separate writing provided  
5 on the designated pay date with the employee’s payment of wages.”

6       27.     Here, at all relevant times, Defendant failed in its obligation to provide Plaintiff and  
7 other aggrieved employees the legally required paid sick days at the legal rate, including all forms of  
8 compensation, pursuant to Labor Code §§ 246(a), (b). As such, Defendant paid sick time below the  
9 “regular rate of pay” as required by Labor Code §§ 246(l) (1-2). Based on the foregoing Labor Code  
10 violations, Plaintiff seeks all civil and statutory penalties available and applicable under Labor Code  
11 § 2699(f)(2), and for attorneys’ fees and costs pursuant to Labor Code § 2699(g)(1).

12       28.     Moreover, at all relevant times, Plaintiff and other aggrieved employees were denied  
13 compliant and timely 30-minute off-duty meal periods as mandated by California law. Due to  
14 Defendant’s uniform meal period policies/practices, operational requirements, and work demands,  
15 Plaintiff and other aggrieved employees often could not take timely and uninterrupted net 30-minute  
16 first meal periods before the end of the fifth hour of work. Further, when Plaintiff and other aggrieved  
17 employees worked more than 10.0 hours in a shift, they were not always allowed and permitted to  
18 take a mandated second meal period before the end of the tenth hour of work in violation of the Labor  
19 Code and applicable Wage Orders. Indeed, Plaintiff’s and other aggrieved employees’ meal periods  
20 were often interrupted and/or lasted fewer than 30 minutes due to Defendant’s meal period  
21 policies/procedures, operational requirements, and work demands.

22       29.     In addition, for each missed or non-compliant meal period, Defendant failed and  
23 continues to fail to maintain a mechanism by which aggrieved employees were paid meal period  
24 premiums at the “regular rate of pay” pursuant to *Ferra v. Loews Hollywood Hotel, LLC* (2021) and  
25 Labor Code § 226.7.

26       30.     Accordingly, due to Defendant’s uniform meal period practices, aggrieved employees  
27 were also regularly denied legally compliant meal periods in violation of Labor Code §§ 226.7, 510,  
28 516, and applicable Wage Orders, and would be entitled to penalties under Labor Code § 2698 *et seq.*

1           31.     Next, at all relevant times, Plaintiff and other aggrieved employees were not provided  
2 with all 10-minute rest periods for every four hours worked, or a major fraction thereof, due to  
3 Defendant's uniform rest period policies/practices, operational requirements, and work demands. As  
4 a result, Plaintiff and other aggrieved employees were and are often unable to take a net 10-minute  
5 duty-free rest period for every major fraction of four hours worked. This includes a second rest period  
6 for shifts in excess of six hours and a third rest period for shifts in excess of 10.0 hours in a workday.

7           32.     By not relieving all aggrieved employees of all duties during rest periods, Defendant  
8 failed to provide legally compliant rest periods. See *Augustus v. ABM Security Services, Inc.* (2016)  
9 2 Cal. 5th 257, 269 [concluding that "during rest periods employers must relieve employees of all  
10 duties and relinquish control over how employees spend their time."] (Emphasis added). In *Augustus*,  
11 the California Supreme Court expressly rejected the employer's assertion that it could provide an on-  
12 duty rest period to employees who worked as security guards and further explained: "that employers  
13 [must] relinquish any control over how employees spend their break time and relieve their employees  
14 of all duties." *Id.* at 273. Each time aggrieved employees could not take a compliant rest period,  
15 Defendant failed and continues to fail to adequately pay rest period premium payments at the "regular  
16 rate of pay" as required by Labor Code § 226.7.

17           33.     Accordingly, due to Defendant's uniform rest period policies/practices and work  
18 demands, aggrieved employees were regularly denied legally compliant rest breaks in violation of  
19 Labor Code §§ 226.7, 512, and applicable Wage Orders, and would be entitled to penalties under  
20 Labor Code § 2698 *et seq.*

21           34.     As a result of Defendant's failure to pay Plaintiff and other aggrieved employees for  
22 all hours they were subject to the control of Defendant, including all overtime wages, sick pay wages,  
23 Defendant's failure to adequately pay for all overtime/sick pay wages at the appropriate legal rate,  
24 and Defendant's failure to pay all meal and rest period premiums at the "regular rate of pay,"  
25 Defendant issued wage statements which failed to identify the gross wages earned accurately, the  
26 total hours worked, the net wages earned, and the correct corresponding number of hours worked at  
27 each hourly rate, in violation of Labor Code § 226(a)(1, 2, 5, and 9).

28           35.     Labor Code § 226.3 provides that "[a]ny employer who violates subdivision (a) of

1 Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per  
2 employee per violation in an initial violation and one thousand dollars (\$1,000) per employee for  
3 each violation in a subsequent citation, for which the employer fails to provide the employee a wage  
4 deduction statement or fails to keep the required in subdivision (a) of Section 226.”

5 36. Thus, for the violations of Labor Code section 226 described above, Plaintiff and other  
6 aggrieved employees may also recover Labor Code § 226.3 penalties for Defendant’s violations of  
7 Labor Code § 226(a). Consequently, because Defendant failed to comply with Labor Code § 226(a),  
8 Plaintiff and other aggrieved employees would be entitled to recover penalties under Labor Code §  
9 226(e) and/or 2698 *et seq.*

10 37. Finally, at all relevant times, Defendant required Plaintiff and other aggrieved  
11 employees to incur necessary expenses for work-related purposes but did not reimburse aggrieved  
12 employees adequately for these necessary expenditures in violation of Labor Code §§ 2802-2804.  
13 Here, Defendant uniformly failed to reimburse aggrieved employees for all necessary costs incurred  
14 in discharging their duties. (*See Cochran v. Schwan’s Home Service, Inc.*, (2014) 228 Cal.App.4th  
15 1137, 1144 “[i]f an employee is required to make work-related calls on a personal cell phone, then  
16 he or she is incurring an expense for the purposes of section 2802. It does not matter whether the  
17 phone bill is paid for by a third person or at all...To show liability under section 2802, an employee  
18 needs only to show that he or she was required to use a personal cell phone to make work-related  
19 calls, and he or she was not reimbursed”]). Accordingly, due to Defendant’s uniform failure to  
20 adequately reimburse for necessary business expenditures in violation of Labor Code §§ 2802-2804  
21 and applicable Wage Orders. Plaintiff and other aggrieved employees would be entitled to civil  
22 penalties under Labor Code § 2698 *et seq.*

23 **FIRST CAUSE OF ACTION**

24 **PRIVATE ATTORNEYS GENERAL ACT**

25 **(Plaintiff and Similarly Aggrieved Employees Against All Defendants)**

26 38. Plaintiff re-alleges and incorporates by reference each and every allegation outlined  
27 in the preceding paragraphs.

28 39. Defendant has committed several Labor Code violations against Plaintiff and other

1 similarly aggrieved employees. Plaintiff, an “aggrieved employee” within the meaning of Labor Code  
2 § 2698 *et seq.*, acting on behalf of the State of California, brings this representative action against  
3 Defendant to recover the civil penalties due to Plaintiff, other similarly aggrieved employees, and the  
4 State of California according to proof pursuant to Labor Code § 2699 (a) and (f) including, but not  
5 limited to (1) \$100 for each initial violation and \$200 for each subsequent violation per employee per  
6 pay period for those violations of the Labor Code for which no civil penalty is specifically provided  
7 based on the following Labor Code violations:

8 a) Defendant’s failure to pay all overtime wages at the “regular rate of pay” because  
9 Defendant failed to include all forms of compensation, including, but not limited to, shift pay,  
10 commissions, incentives, stipends, non-discretionary bonuses, and other forms of remuneration;

11 b) Defendant’s failure to pay all sick pay at the “regular rate of pay”;

12 c) Defendant’s failure to allow and permit legally compliant meal periods or compensation  
13 at the “regular rate of pay” in lieu thereof;

14 d) Defendant’s failure to allow and permit legally compliant rest periods or compensation  
15 at the “regular rate of pay” in lieu thereof;

16 e) Defendant’s failure to furnish legally compliant wage statements pursuant to Labor  
17 Code § 226(a); and

18 f) Defendant’s failure to reimburse aggrieved employees for all necessary business  
19 expenses in violation of Labor Code §§ 2802-2804.

20 40. On or about January 27, 2025, Plaintiff notified Defendant Dairyland Produce, LLC.  
21 (“Defendant”) via certified mail and the California Labor and Workforce Development Agency  
22 (“LWDA”) via its website of Defendant’s violations of the California Labor Code § 2698 *et seq.*  
23 with respect to violations of the California Labor Code identified in Paragraph 39 (a)-(f). Now that  
24 sixty-five days (65) have passed from Plaintiff notifying Defendant of these violations, Plaintiff has  
25 exhausted his administrative requirements for bringing a claim under the Private Attorneys General  
26 Act with respect to these violations.

27 41. Plaintiff was compelled to retain the services of counsel to file this court action to  
28 protect their interests and the interests of other similarly aggrieved employees and to assess and

1 collect the civil penalties owed by Defendant. Plaintiff has, therefore, incurred attorneys' fees and  
2 costs, which he is entitled to receive under California Labor Code § 2698 *et seq.*

3 **PRAYER FOR RELIEF**

4 **WHEREFORE**, Plaintiff prays for judgment for himself and all others on whose behalf this  
5 suit is brought against Defendant, as follows:

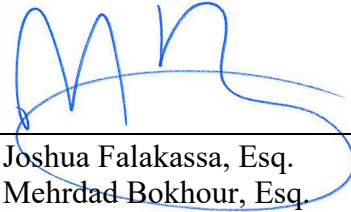
6 1. Upon the First Cause of Action, for civil penalties due to similarly aggrieved  
7 employees, and the State of California according to proof pursuant to Labor Code § 2699 (a) and (f)  
8 including, but not limited to: (1) \$100 for each initial violation and \$200 for each subsequent violation  
9 per employee per pay period for those violations of the Labor Code for which no civil penalty is  
10 specifically provided under the Labor Code;

11 2. For attorneys' fees and costs as provided by Labor Code § 2698 *et seq.*, and Code  
12 of Civil Procedure §1021.5; and

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

15 Dated: April 3, 2025

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

16  
17  
18 By: 

Joshua Falakassa, Esq.

Mehrdad Bokhour, Esq.

Attorneys for Plaintiff and the Aggrieved Employees  
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