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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO

NANCY MARQUEZ MALDONADO
A.K.A. NANCY MALDONADO
MARQUEZ, an individual, on behalf of
herself and others similarly situated

PLAINTIFF,

v.

BALDA C. BREWER, INC.; and DOES 1
thru 50, inclusive,

DEFENDANTS.

CASE NO. CIVSB2219827

**[Amended as a matter of right, pursuant to
Labor Code § 2699.3(a)(2)(C)]**

**SECOND AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT**

1. Failure to Pay Wages and/or Overtime Under Labor Code §§ 510, 1194, and 1199
2. Failure to Provide Meal Breaks Pursuant to Labor Code §§ 226.7 and 512
3. Failure to Provide Rest Breaks Pursuant to Labor Code §§ 226.7
4. Violation of Labor Code § 226(a)
5. Penalties Pursuant to Labor Code § 203
6. Violation of Labor Code § 1174
7. Violation of Business & Professions Code § 17200
8. Penalties Pursuant to Labor Code §2699, et seq.

1 Plaintiff NANCY MARQUEZ MALDONADO A.K.A. NANCY MALDONADO
2 MARQUEZ, an individual, on behalf of herself, all others similarly situated, and on behalf of the
3 people of the State of California and as an “aggrieved employee” under Labor Code Private
4 Attorneys General Act of 2004, § 2699, *et seq.* (hereafter “PAGA”), complains of Defendant
5 BALDA C. BREWER, INC. (“Defendant”) and each of them, as follows:

6 **I.**

7 **INTRODUCTION**

8 1. This is a Class and Representative Action, pursuant to Code of Civil Procedure §
9 382, on behalf of Plaintiff and a Proposed Class defined as:

10 All hourly employees worked for Balda C. Brewer, Inc., directly or
11 through a staffing agency, who are employed or have been
12 employed by Balda C. Brewer, Inc., in the State of California who
worked one or more pay periods since four (4) years prior to the
filing of this action to the present. (“Proposed Class”)

13 2. From at least four (4) years prior to the filing of this action continuing to the present,
14 Defendant has had a consistent policy of failing to pay wages and/or overtime to Plaintiff and all
15 Proposed Class members because Defendant adopted an alternative workweek schedule that
16 provides that Plaintiff and all Proposed Class members work more than 40 hours per alternative
17 work week without being paid at one and one-half (1 ½) times Plaintiff and all Proposed Class
18 members’ regular rate of pay. Defendant failed to lawfully adopt an alternative workweek schedule
19 for employees employed through a staffing agency and failed to properly compensate Plaintiff and
20 all Proposed Class members for overtime when they worked over forty hours in a work week.

21 3. From at least four (4) years prior to the filing of this action and continuing to the
22 present, Defendant has had a consistent policy of failing to provide compliant meal periods for the
23 following reasons:

- 24
- 25 a. Defendant failed to apprise Plaintiff and Proposed Class members of
26 their rights associated with meal periods by way of lawful written policy
27 and failed to provide compliant meal periods for shifts of over five (5)
hours in length.
- 28 b. Defendant failed to provide compliant thirty (30) minute uninterrupted
meal periods. Defendant has had a consistent policy of: (1) requiring

1 Plaintiff and all Proposed Class members to take meal breaks that
2 occurred after the first five hours of each shift; (2) failing to provide
3 meal periods on all shifts of over five (5) hours in length; (3) required
4 Plaintiff and Proposed Class members to work shifts over ten (10) hours
5 without providing a second meal period of thirty minutes in length
6 altogether; and (4) failed to pay such employees one (1) hour of pay at
7 the employees regular rate of compensation for each workday that the
8 first and second meal periods were not provided within the first (5)
9 hours of the shift or for shifts over ten (10) hours.

- 10 c. Defendant has maintained an unlawful meal rounding policy wherein it
11 rounded time for an employee's meal break regardless of whether a 30-
12 minute compliant meal period was actually provided under California
13 law. This rounding policy was unlawful and did not account for whether
14 the meal periods were provided, employees took their meal periods at
15 all, took timely meal periods, and/or took meal periods of less than thirty
16 minutes.

17 4. For at least four (4) years prior to the filing of this action and continuing to the
18 present, Defendant has had a consistent policy of failing to provide Plaintiff and Proposed Class
19 members with rest breaks of not less than ten (10) minutes per four (4) hour work period, or major
20 fraction thereof. Additionally, on a regular and consistent basis, Defendant failed to provide
21 Plaintiff and the Proposed Class members with a third rest period despite regularly requiring
22 Plaintiff and Proposed Class members to work over ten (10) hours.

23 5. For at least one (1) year prior to the filing of this action continuing to the present,
24 Defendant has had a consistent policy and practice of issuing to Plaintiff and Proposed Class
25 members itemized wage statements that did not include all applicable hourly rates in effect during
26 the pay period and the corresponding number of hours worked at each hourly rate by the employee,
27 in violation of Labor Code § 226(a)(2) and (9). The itemized wage statements provided to
28 Plaintiff and Proposed Class members did not include the hours worked at each hourly rate.
Defendant failed to indicate the temporary service assignments and the number of hours worked
and all applicable hourly rates in effect during the pay period and the corresponding number of
hours worked at each hourly rate by the employee on the wage statements in violation of the Labor
Code.

6. For at least three (3) years prior to the filing of this action continuing to the present,
Defendant has failed to pay all wages due at the time of termination or resignation to Plaintiff and

1 the Proposed Class.

2 7. Defendant failed to maintain accurate records for Plaintiff and the Proposed Class
3 as required by Labor Code §§ 1174. Labor Code § 1174 requires employers to maintain a record
4 showing the names and addresses of all employees and payroll records showing the hours worked
5 daily by and the wages paid to, and employees employed at the respective establishments for a
6 minimum period of three years. Here, Defendant fails to maintain accurate payroll records that
7 maintain the actual daily hours worked and the wages paid for Plaintiff and the aggrieved
8 employees, including earned and unpaid minimum, overtime, and premium wages as discussed
9 above

10 8. Plaintiff, on behalf of herself and all Proposed Class members brings this action
11 pursuant to Labor Code §§ 201, 202, 203, 204, 210, 226, 226(a), 226.7, 510, 511, 512, 1174,
12 1174.5, 1194, 1198.51199 and 2802; Wage Order 1-2001; and California Code of Regulations,
13 Title 8, Section 11010, seeking unpaid wages/overtime, meal and rest period penalties, accurate
14 itemized wage statements, other penalties, injunctive and other equitable relief, and reasonable
15 attorneys' fees and costs.

16 9. Plaintiff, on behalf of herself and all Proposed Class members, pursuant to Business
17 & Professions Code §§ 17200-17208, also seeks injunctive relief, restitution, and disgorgement of
18 all benefits Defendant enjoyed from its unlawful conduct as described herein.

19 10. For at least one (1) year prior to the date of the letter sent to the Labor Workforce
20 and Development Agency ("LWDA") and Defendant giving notice of the claims pursuant to
21 PAGA and continuing to the present and as extended by Emergency Rule 9 referenced in paragraph
22 2 above, Defendant has violated Labor Code provisions, as detailed below, giving rise to a claim
23 pursuant to PAGA. Plaintiff, on behalf of herself and all aggrieved employees presently or
24 formerly employed by Defendant during the liability period as defined in her PAGA notice letters
25 (*see* Exhibit "1"), brings this representative action pursuant to Labor Code § 2699, *et seq.* seeking
26 penalties for Defendant's violations of Labor §§ 201, 202, 203, 204, 210, 226, 226(a), 226.7, 510,
27 511, 512, 1174, 1174.5 1194, 1198.5, 1199, and 2802.

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1 **II.**

2 **JURISDICTION AND VENUE**

3 11. This Court has subject matter jurisdiction over all causes of action asserted herein
4 pursuant to Article VI, § 10 of the California Constitution and California Code of Civil Procedure
5 § 410.10 by virtue of the fact that this is a civil action in which the matter in controversy, exclusive
6 of interest, exceeds \$25,000, and because each cause of action asserted arises under the laws of the
7 State of California or is subject to adjudication in the courts of the State of California.

8 12. This Court has personal jurisdiction over Defendant because Defendant has caused
9 injuries in the County of San Bernardino and the State of California through their acts, and by their
10 violation of the California Labor Code, California state common law, and California Business &
11 Professions Code § 17200, *et seq.*

12 13. Venue as to each Defendant is proper in this judicial district, pursuant to Code of
13 Civil Procedure § 395. Defendant operates within California and does business within San
14 Bernardino County. The unlawful acts alleged herein have a direct effect on Plaintiff and all
15 Proposed Class members within the State of California and the county of San Bernardino.

16 14. This case should be classified as complex according to Rule 3.400 of the California
17 Rules of Court, and assigned to a complex litigation judge and department, as it will involve
18 substantial documentary evidence, a large number of witnesses, and is likely to involve extensive
19 motion practice raising difficult or novel issues that will be time-consuming to resolve and would
20 require substantial post judgment judicial supervision.

21 15. Plaintiff files this amended complaint adding a claim for penalties pursuant to
22 Labor Code § 2699, *et seq.* as a matter of right, pursuant to Labor Code § 2699.3(a)(2)(C)].

23 **III.**

24 **PARTIES**

25 **A. PLAINTIFF**

26 16. Plaintiff NANCY MARQUEZ MALDONADO A.K.A. NANCY MALDONADO
27 MARQUEZ is a resident of California.

28 17. Plaintiff and all Proposed Class members, were regularly required to:

- a. Work without being paid for all hours at the appropriate overtime rate;
- b. Work without being provided compliant first and second meal periods;
- c. Work without being provided lawful rest periods;
- d. Work without being provided accurate itemized wage statements.

18. Defendant willfully failed to compensate Plaintiff and all Proposed Class members for wages at the termination of their employment with Defendant.

19. As a result of this conduct, Defendant has engaged in unfair competition and unlawful business practices.

20. Plaintiff and all aggrieved employees as defined in his notice letter to the LWDA are “aggrieved employees” within the meaning of Labor Code § 2699, *et seq.* (see Labor Code §2699(c).)

B. DEFENDANTS

21. Defendant BALDA C. BREWER, INC. is believed to be a California corporation operating within the State of California. Defendant’s corporate address is believed to be 4501 E Wall Street, Ontario, CA 91761. Upon information and belief, Defendant employed Plaintiff and similarly situated persons as hourly employees within California. Defendant has done and does business throughout the State of California.

22. The true names and capacities, whether individual, corporate, associate, or otherwise, of Defendants sued herein as DOES 1 to 50, inclusive, are currently unknown to Plaintiff, who therefore sues Defendants by such fictitious names under Code of Civil Procedure § 474. Plaintiff is informed and believes, and based thereon alleges, that each of the Defendants designated herein as a DOE is legally responsible in some manner for the unlawful acts referred to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and capacities of the Defendants designated hereinafter as DOES when such identities become known.

23. Plaintiff is informed and believes, and based thereon alleges, that each Defendant acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are legally attributable to the other Defendants. Furthermore, Defendants in all respects acted as the

1 employer and/or joint employer of Plaintiff and the Proposed Class members.

2 24. Furthermore, Defendants acted in all respects as the employers or joint employers
3 of the Proposed Class. Defendants, and each of them, exercised control over the wages, hours or
4 working conditions of the Proposed Class, or suffered or permitted the Proposed Class to work, or
5 engaged, thereby creating a common law employment relationship, with the Proposed Class.
6 Therefore, Defendants, and each of them, employed or jointly employed the Proposed Class.

7 **IV.**

8 **FACTUAL BACKGROUND**

9 25. Plaintiff and the Proposed Class are, and at all times pertinent hereto, have been
10 classified as non-exempt employees by Defendant. Defendant hires employees who work as
11 hourly employees who are paid on an hourly basis.

12 26. Upon information and belief, Plaintiff and the Proposed Class are covered by
13 California Industrial Welfare Commission Occupational Wage Order No. 1-2001 (Title 8 Cal.
14 Code of Regs. § 11010).

15 27. Plaintiff and the Proposed Class members were not paid wages and/or overtime at
16 the appropriate rate of pay because Defendant adopted an alternative workweek schedule that
17 provides that Plaintiff and all Proposed Class members work more than 40 hours per alternative
18 work week without being paid at one and one-half (1 ½) times Plaintiff and Proposed Class
19 members' regular rate of pay. Defendant failed to lawfully adopt an alternative workweek schedule
20 and, as a result, failed to properly compensate Plaintiff and all Proposed Class members for
21 overtime when they worked over forty hours in a work week.

22 28. Defendant failed to inform Plaintiff and the members of the Proposed Class of their
23 right to take compliant first and second meal periods by way of a lawful policy.

24 29. Plaintiff and Proposed Class members have been forced by Defendant to work over
25 five (5) hours in one day without being provided a thirty (30) minute uninterrupted meal break and
26 not being compensated one (1) hour of pay at the regular rate of compensation for each workday
27 that a meal period was not provided or provided after five (5) hours, all in violation of California
28 labor laws, regulations, and Industrial Welfare Commission Wage Orders. Additionally,

1 Defendant failed to inform Plaintiff and the Proposed Class of their right to take meal periods by
2 way of a lawful policy.

3 30. Plaintiff and all Proposed Class members have been forced by Defendant to work
4 over ten (10) hours in one day without being provided a second thirty (30) minute uninterrupted
5 meal break period(s) and not being compensated one (1) hour of pay at the regular rate of
6 compensation for each workday that a second meal period was not provided, all in violation of
7 California labor laws, regulations, and Industrial Welfare Commission Wage Orders. Additionally,
8 Defendant failed to inform Plaintiff and the Proposed Class of their right to take second meal
9 periods by way of a lawful policy.

10 31. Defendant has maintained an unlawful meal rounding policy wherein it rounded
11 time for an employee's meal break regardless of whether a 30-minute compliant meal period was
12 actually provided under California law. This rounding policy was unlawful and did not account
13 for whether the meal periods were provided, employees took their meal periods at all, took timely
14 meal periods, and/or took meal periods of less than thirty minutes.

15 32. Plaintiff and the Proposed Class have been required to work four-hour increments
16 (or major fractions thereof) without being provided with a ten (10) minute rest period. Also,
17 Defendant failed to provide Plaintiff and the Proposed Class members with a third rest period
18 despite regularly requiring Plaintiff and the Proposed Class to work over ten (10) hours.
19 Additionally, Defendant failed to inform Plaintiff and the Proposed Class of their right to take rest
20 periods by way of a lawful policy.

21 33. Defendant has failed to comply with Industrial Welfare Commission ("IWC")
22 Wage Order 1-2001(7) and Labor Code § 226(a) by issuing to Plaintiff and the Proposed Class
23 members itemized wage statements that did not include all applicable hourly rates in effect during
24 the pay period and the corresponding number of hours worked at each hourly rate by the employee,
25 in violation of Labor Code §§ 226(a)(2) and (9). The itemized wage statements provided to
26 Plaintiff and the Proposed Class members did not include the hours worked at each hourly rate.
27 Defendant failed to indicate the temporary service assignments and the number of hours worked
28 and all applicable hourly rates in effect during the pay period and the corresponding number of

1 hours worked at each hourly rate by the employee on the wage statements in violation of the Labor
2 Code.

3 34. Defendant willfully failed to pay wages and compensation, when Plaintiff and all
4 Proposed Class members quit or were discharged. This failure was willful, without legal
5 justification, and interfered with Plaintiff's and Class Members' rights.

6 35. As a result of the acts alleged herein, Defendant violated Labor Code §2699, *et seq.*

7 **V.**

8 **CLASS ACTION ALLEGATIONS**

9 36. Plaintiff brings this action on behalf of herself, and all others similarly situated as
10 a Class Action pursuant to § 382 of the Code of Civil Procedure. Plaintiff seeks to represent a
11 proposed class composed of and defined as follows:

12 All hourly employees worked for Balda C. Brewer, Inc., directly or
13 through a staffing agency, who are employed or have been
14 employed by Balda C. Brewer, Inc., in the State of California who
15 worked one or more pay periods since four (4) years prior to the
16 filing of this action to the present. ("Proposed Class")

17 37. Plaintiff reserves the right under Rule 3.765(b) of the California Rules of Court to
18 amend or modify the class description with greater specificity, by division into subclasses, or by
19 limitation to particular issues.

20 38. This action has been brought and may properly be maintained as a class action
21 under the provisions of § 382 of the Code of Civil Procedure because there is a well-defined
22 community of interest in the litigation and the Proposed Classes are easily ascertainable.

23 **A. NUMEROSITY**

24 39. The potential members of the Proposed Class as defined are so numerous that
25 joinder of all the members of the Proposed Class is impracticable. While the precise number of
26 Proposed Class members has not been determined at this time, Plaintiff is informed and believes
27 that Defendant currently employ, and during the relevant time periods employed over 50 members
28 of the Proposed Class.

40. Plaintiff alleges that Defendant's employment records would provide information

as to the number and location of all Proposed Class members. Joinder of all members of the Proposed Class is not practicable.

B. COMMONALITY

41. There are questions of law and fact common to the Proposed Class that predominate over any questions affecting only individual Proposed Class members. These common questions of law and fact include, without limitation:

a. Whether Defendant failed to pay wages and/or overtime compensation as required by the Labor Code and Wage Orders under Labor Code §§ 510, 1194, and 1199;

b. Whether Defendant violated Labor Code § 226.7 and IWC Wage Order 1-2001 or other applicable IWC Wage Orders, by failing to inform Plaintiff and the Proposed Class of their right to take meal periods and by failing to provide required meal periods throughout the term of employment and failing to compensate said employees one (1) hours wages in lieu of rest periods;

c. Whether Defendant violated Labor Code § 226.7 and IWC Wage Order 1 - 2001 or other applicable IWC Wage Orders, by failing to inform Plaintiff and the Proposed Class of their right to take rest periods and failing to provide required rest periods throughout the term of employment and failing to compensate said employees one (1) hours wages in lieu of rest periods;

d. Whether Defendants violated Labor Code § 226(a) and Wage Order 1-2001 or other applicable IWC Wage Orders, and Cal. Code Regs., Title 8, Section 11010 by failing to issue accurate itemized wage statements for Plaintiff and the members of the Proposed Class;

e. Whether Defendant violated §§ 201-203 of the Labor Code by failing to pay compensation due and owing at the time that any Proposed Class member's employment with Defendant terminated;

f. Whether Defendant violated § 1175 of the Labor Code by failing to maintain accurate records;

g. Whether Defendant violated § 17200, *et seq.* of the Business & Professions Code by engaging in the acts previously alleged; and

1 h. Whether Plaintiff and the members of the Proposed Class are entitled to
2 equitable relief pursuant to Business & Professions Code § 17200, *et seq.*

3 i. Whether Defendant violated Labor Code § 2699, *et seq.* by engaging in the
4 acts alleged herein.

5 **C. TYPICALITY**

6 42. The claims of Plaintiff are typical of the claims of the Proposed Class. Plaintiff and
7 all members of the Proposed Class sustained injuries and damages arising out of and caused by
8 Defendant's common course of conduct in violation of laws, regulations that have the force and
9 effect of law, and statutes as alleged herein.

10 **D. ADEQUACY OF REPRESENTATION**

11 43. Plaintiff will fairly and adequately represent and protect the interests of the
12 members of the Proposed Class. Counsel who represent Plaintiff and the Proposed Class are
13 competent and experienced in litigating large employment class actions.

14 **E. SUPERIORITY OF CLASS ACTION**

15 44. A class action is superior to other available means for the fair and efficient
16 adjudication of this controversy. Individual joinder of all Proposed Class members is not
17 practicable, and questions of law and fact common to the Proposed Class predominate over any
18 questions affecting only individual members of the Proposed Class. Each member of the Proposed
19 Class has been damaged and is entitled to recovery by reason of Defendant's illegal policy and/or
20 practice of failing to pay all wages due, failing to provide meal and rest periods, failing to provide
21 accurate itemized wage statements, and failing to pay all wages upon resignation or termination.

22 45. Class action treatment will allow those similarly situated persons to litigate their
23 claims in the manner that is most efficient and economical for the parties and the judicial system.
24 Plaintiff is unaware of any difficulties that are likely to be encountered in the management of this
25 action that would preclude its maintenance as a class action.

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1 **VI.**

2 **FIRST CAUSE OF ACTION**

3 **PLAINTIFF ON BEHALF OF HERSELF AND THE PROPOSED CLASS**

4 **FAILURE TO PAY WAGES AND/OR OVERTIME UNDER**

5 **LABOR CODE §§ 510, 511, 1194, 1199 AND IWC WAGE ORDER 1-2001(3)(B)**

6 46. Plaintiff, on behalf of herself and the Proposed Class, realleges and incorporates by
7 reference all previous paragraphs.

8 47. Labor Code §§ 510, 511, 1194, and 1199. Labor Code §§ 1194 and 1199 require
9 an employer to pay its employees the legal minimum wage and the legal overtime compensation
10 applicable. Labor Code § 510(a) states that eight hours of labor constitutes a day's work and any
11 work in excess of eight hours in one workday and any work in excess of 40 hours in any one
12 workweek must be compensated at the rate of no less than one and one-half times the regular rate
13 of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the
14 rate of no less than twice the regular rate of pay.

15 48. Labor Code § 511 and IWC Wage Order 1-2001(3)(B) provide, upon the proposal
16 of an employer, for the adoption of an alternative workweek schedule that authorizes work by the
17 affected employees for no longer than 10 hours per day within a 40-hour workweek without the
18 payment to the affected employees of an overtime rate of compensation pursuant to this section.
19 Furthermore, these statutes state that "all work performed in any workday beyond the schedule
20 established by the agreement up to 12 hours a day or beyond 40 hours per week shall be paid at
21 one and one-half (1 ½) times the employee's regular rate of pay. All work performed in excess of
22 12 hours per day and any work in excess of eight (8) hours on those days worked beyond the
23 regularly scheduled number of workdays established by the alternative workweek agreement shall
24 be paid at double the employee's regular rate of pay. Any alternative workweek agreement adopted
25 pursuant to this section shall provide for not less than four (4) hours of work in any shift. Nothing
26 in this section shall prohibit an employer, at the request of the employee, to substitute one day of
27 work for another day of the same length in the shift provided by the alternative workweek
28 agreement on an occasional basis to meet the personal needs of the employee without the payment

1 of overtime. No hours paid at either one and one-half (1 1/2) or double the regular rate of pay shall
2 be included in determining when 40 hours have been worked for the purpose of computing
3 overtime compensation.”

4 49. Defendant has had a consistent policy of failing to pay wages and/or overtime to
5 Plaintiff and all Proposed Class members because Defendant adopted an alternative workweek
6 schedule that provides that Plaintiff and all Proposed Class members work more than 40 hours per
7 alternative work week without being paid at one and one-half (1 1/2) times Plaintiff and all Proposed
8 Class members’ regular rate of pay. As such, Defendant failed to lawfully adopt an alternative
9 workweek schedule and failed to properly compensate Plaintiff and all Proposed Class members
10 for overtime when they worked over forty hours in a work week.

11 50. By their policy of requiring Plaintiff and members of the Proposed Class to work
12 in excess of eight (8) hours in a workday and/or forty (40) hours in a workweek without
13 compensating them at the rate of one-half (1 1/2) their regular rate of pay, Defendant willfully
14 violated the provisions of Labor Code §§ 510, 511, 1194 and 1199.

15 51. As a result of the unlawful acts of Defendant, Plaintiff and the Proposed Class
16 members have been deprived of wages and/or overtime in amounts to be determined at trial, and
17 are entitled to recovery of such amounts, plus interest and penalties thereon, attorneys’ fees, and
18 costs.

19 **VII.**

20 **SECOND CAUSE OF ACTION**

21 **PLAINTIFF ON BEHALF OF HERSELF AND THE PROPOSED CLASS**

22 **FAILURE TO PROVIDE MEAL PERIODS PURSUANT TO**

23 **LABOR CODE § 226.7 AND LABOR CODE § 512**

24 52. Plaintiff, on behalf of herself and the Proposed Class, realleges and incorporates by
25 reference all previous paragraphs.

26 53. Labor Code §§ 226.7 and 512 require an employer to pay an additional hour of
27 compensation for each meal period the employer fails to provide. Employees are entitled to a first
28 meal period of at least thirty (30) minutes for shifts over five (5) hours, to be provided within the

1 first five (5) hours of the shift, and a second meal period of at least thirty (30) minutes for shifts
2 over ten (10) hours. If an employee is entitled to a second meal period, it must be provided after
3 no more than ten (10) hours of work.

4 54. Wage Orders (1-2001) state that: An employer may not employ an employee for a
5 work period of more than ten (10) hours per day without providing the employee with a second
6 meal period of not less than thirty (30) minutes, except that if the total hours worked is no more
7 than twelve (12) hours, the second meal period may be waived by mutual consent of the employer
8 and the employee only if the first meal period was not waived. Pursuant to Labor Code § 226.7(c),
9 if an employer fails to provide an employee with a lawful meal period, the employer must pay the
10 employee one (1) hour of pay at the employee's regular rate of compensation for each workday
11 that a thirty (30) minute uninterrupted meal period was not provided, was not provided in full, or
12 was not provided in a timely manner.

13 55. Defendant failed to maintain a policy informing Plaintiff and the Proposed Class of
14 these rights.

15 56. Plaintiff and the Proposed Class consistently worked shifts over five (5) hours.
16 Defendant failed to provide Plaintiff and the Proposed Class with proper meal periods of not less
17 than thirty (30) minutes as required by the Labor Code during the relevant time period.

18 57. Plaintiff and the Proposed Class consistently worked shifts over ten (10) hours.
19 Defendant failed to provide Plaintiff and the Proposed Class with timely meal periods of not less
20 than thirty (30) minutes within the first ten (10) hours for shifts over ten (10) hours work as
21 required by the Labor Code during the relevant time period.

22 58. Additionally, Defendant has maintained an unlawful meal rounding policy wherein
23 it rounded time for an employee's meal break regardless of whether a 30-minute compliant meal
24 period was actually provided under California law. This rounding policy was unlawful and did
25 not account for whether the meal periods were provided, employees took their meal periods at all,
26 took timely meal periods, and/or took meal periods of less than thirty minutes.

27 59. Pursuant to Labor Code § 226.7, Plaintiff and the Proposed Class are entitled to
28 damages in an amount equal to one (1) hour of wages per missed meal break, per day in a sum to

1 be proven at trial.

2 **VIII.**

3 **THIRD CAUSE OF ACTION**

4 **PLAINTIFF ON BEHALF OF HERSELF AND THE PROPOSED CLASS**

5 **FAILURE TO ALLOW REST PERIODS PURSUANT TO**

6 **LABOR CODE § 226.7**

7 60. Plaintiff, on behalf herself and the Proposed Class, realleges and incorporates by
8 reference all previous paragraphs.

9 61. Labor Code § 226.7 requires an employer to pay an additional hour (1) of
10 compensation for each rest period the employer fails to provide. Employees are entitled to a paid
11 ten (10) minute rest break for every four (4) hours worked (or major fraction thereof). Defendant
12 failed to maintain a policy informing Plaintiff and the Proposed Class of this right.

13 62. Defendant failed to provide Plaintiff and the Proposed Class members with rest
14 breaks of not less than ten (10) minutes per four (4) hour work period, or major fraction thereof.
15 Additionally, on a regular and consistent basis, Defendant failed to provide Plaintiff and the
16 Proposed Class members with a third rest period despite regularly requiring Plaintiff and the
17 Proposed Class members to work over ten (10) hours. As such, Defendant failed to provide
18 Plaintiff and the Proposed Class members with compliant rest periods. Further, Plaintiff and the
19 Proposed Class members were not compensated with one (1) hour of wages for each missed rest
20 period as required by Labor Code § 226.7.

21 63. Pursuant to Labor Code § 226.7, Plaintiff and the Proposed Class are entitled to
22 damages in an amount equal to one (1) hour of wages per missed rest period, in a sum to be proven
23 at trial.

24 **IX.**

25 **FOURTH CAUSE OF ACTION**

26 **PLAINTIFF ON BEHALF OF HERSELF AND THE PROPOSED CLASS**

27 **VIOLATION OF LABOR CODE § 226(A)**

28 64. Plaintiff, on behalf of herself and the Proposed Class, realleges and incorporates by

1 reference all previous paragraphs.

2 65. Labor Code § 226(a)(2) requires that every employer shall semimonthly or at the
3 time of each payment of wages, furnish each of his or her employees, an accurate itemized
4 statement in writing showing the total hours worked by the employee.

5 66. Labor Code § 226(a)(9) requires that every employer shall semimonthly or at the
6 time of each payment of wages, furnish each of his or her employees, an accurate itemized
7 statement in writing showing all applicable hourly rates in effect during the pay period and the
8 corresponding number of hours worked at each hourly rate by the employee.

9 67. Plaintiff and the Proposed Class are issued wage statements that do not include the
10 total hours worked by the employee. Additionally, Plaintiff and the Proposed Class are issued wage
11 statements that do not include all applicable hourly rates in effect during the pay period and the
12 corresponding number of hours worked at an hourly rate by the employee. Defendant failed to
13 indicate the temporary service assignments and the number of hours worked and all applicable
14 hourly rates in effect during the pay period and the corresponding number of hours worked at each
15 hourly rate by the employee on the wage statements in violation of the Labor Code.

16 68. As a result of Defendant's failure to pay wages as described above, Defendant has
17 failed to include the appropriate rates of pay and the accurate hours worked on itemized wage
18 statements for Plaintiff and the Proposed Class.

19 69. Defendant's failure to provide accurate itemized wages statements according to
20 Labor Code § 226(a) was all done on a regular and consistent basis.

21 70. An employee suffering injury as a result of a knowing and intentional failure by an
22 employer to comply with Labor Code § 226(a) is entitled to recover the greater of all actual
23 damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred
24 dollars (\$100) per employee for each violation in a subsequent pay period, not exceeding an
25 aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and
26 reasonable attorneys' fees.

27 ///

28 ///

1 **X.**

2 **FIFTH CAUSE OF ACTION**

3 **PLAINTIFF ON BEHALF OF HERSELF AND THE PROPOSED CLASS**

4 **FAILURE TO REIMBURSE EXPENSES PURSUANT TO LABOR CODE § 2802**

5 71. Plaintiff, on behalf of herself and the Proposed Class, realleges and incorporates by
6 reference all previous paragraphs.

7 72. Labor Code § 2802 requires employers to indemnify employees for all necessary
8 expenditures incurred by employees in the discharge of their duties.

9 73. Plaintiff and the Proposed Class are entitled to reimbursement of all business
10 related expenses they incurred throughout the duration of their employment. Specifically,
11 Defendant has failed to reimburse Plaintiff and the Proposed Class the cost of using their personal
12 cell phone for business related purposes.

13 74. Here, Defendant has failed to reimburse Plaintiff and the Proposed Class the cost
14 of using personal cell phones for business related purposes. Plaintiff and the Proposed Class are
15 required to be available by cell phone and answer/use their cell phones to call, text, and respond
16 to work-related matters while they are off the clock. Defendant fails to reimburse Plaintiff and the
17 Proposed Class for the costs associated with using these personal cell phones. By failing to provide
18 Plaintiff and the Proposed Class with cell phones or other method of communication, Defendant
19 has burdened Plaintiff and the Proposed Class with the cost of using their own cell phones to
20 perform required work.

21 **XI.**

22 **SIXTH CAUSE OF ACTION**

23 **PLAINTIFF ON BEHALF OF HERSELF AND THE PROPOSED CLASS**

24 **WAITING TIME PENALTIES UNDER LABOR CODE §§ 201, 202, AND 203**

25 75. Plaintiff, on behalf of herself and the Proposed Class, realleges and incorporates by
26 reference all previous paragraphs.

27 76. Numerous members of the Proposed Class including the Plaintiff are no longer
28 employed by Defendant. They were either fired or quit Defendant's employ.

77. Defendant's failure to pay wages, as alleged above was willful in that Defendant knew wages to be due but failed to pay them, thus entitling Plaintiff and the Proposed Class to penalties under Labor Code §§ 201, 202, and 203, which provides that an employee's wages shall continue as a penalty until paid for a period of up to thirty (30) days from the time they were due.

78. Defendant has failed to pay Plaintiff and others a sum certain at the time of termination or within seventy-two (72) hours of their resignation, and have failed to pay those sums for thirty (30) days thereafter. Pursuant to the provisions of Labor Code §§ 201, 202, and 203, Plaintiff and the Proposed Class are entitled to a penalty in the amount of Plaintiff's and the Proposed Class members' daily wage multiplied by thirty (30) days.

XII.

SEVENTH CAUSE OF ACTION

PLAINTIFF ON BEHALF OF HERSELF AND THE PROPOSED CLASS

FOR PENALTIES UNDER LABOR CODE §§ 1174 AND 1174.5

79. Plaintiff, on behalf of herself and the Proposed Class, realleges and incorporates by reference all previous paragraphs.

80. For at least one (1) year prior to the date of the letter sent to the Labor & Workforce Development Agency and Defendant giving notice of these PAGA claims and continuing to the present, Defendant failed to maintain accurate records for Plaintiff and the Proposed Class as required by Labor Code §§ 1174. Labor Code § 1174 requires employers to maintain a record showing the names and addresses of all employees and payroll records showing the hours worked daily by and the wages paid to, and employees employed at the respective establishments for a minimum period of three years. Labor Code § 1174.5 further provides that an employer who fails to maintain these records is subject to a \$500 civil penalty. Here, Defendant fails to maintain accurate payroll records that maintain the actual daily hours worked and the wages paid for Plaintiff and the aggrieved employees, including earned and unpaid minimum, overtime, and premium wages as discussed above. Thus, Plaintiff is an aggrieved employee within the meaning of PAGA and Defendant has violated Labor Code §§ 1174 and 1174.5 with respect to Plaintiff and the Proposed Class.

1 **XIII.**

2 **EIGHTH CAUSE OF ACTION**

3 **PLAINTIFF ON BEHALF OF HERSELF AND THE PROPOSED CLASS**

4 **UNFAIR COMPETITION PURSUANT TO BUSINESS & PROFESSIONS CODE § 17200**

5 81. Plaintiff, on behalf of herself and the Proposed Class, realleges and incorporates by
6 reference all previous paragraphs.

7 82. This is a Class Action for Unfair Business Practices. Plaintiff, on behalf of herself,
8 on behalf of the general public, and on behalf of the Proposed Class, bring this claim pursuant to
9 Business & Professions Code § 17200, *et seq.* The conduct of Defendant as alleged in this
10 Complaint has been and continues to be unfair, unlawful, and harmful to Plaintiff, the general
11 public, and the Proposed Class. Plaintiff seeks to enforce important rights affecting the public
12 interest within the meaning of Code of Civil Procedure § 1021.5.

13 83. Plaintiff is a “person” within the meaning of Business & Professions Code § 17204,
14 and therefore has standing to bring this cause of action for injunctive relief, restitution, and other
15 appropriate equitable relief.

16 84. Business & Profession Code § 17200, *et seq.* prohibits unlawful and unfair business
17 practices.

18 85. California’s wage and hour laws express fundamental public policies. Providing
19 employees with proper wages and compensation are fundamental public policies of this State and
20 of the United States. Labor Code § 90.5(a) articulates the public policies of this State to enforce
21 vigorously minimum labor standards, to ensure that employees are not required or permitted to
22 work under substandard and unlawful conditions, and to protect law-abiding employers and their
23 employees from competitors who lower their costs by failing to comply with minimum labor
24 standards.

25 86. Defendant has violated statutes and public policies as alleged herein. Through the
26 conduct alleged in this Complaint, Defendant has acted contrary to these public policies, have
27 violated specific provisions of the Labor Code, and have engaged in other unlawful and unfair
28 business practices in violation of Business & Profession Code § 17200, *et seq.*, depriving Plaintiff,

1 and all persons similarly situated, and all interested persons of rights, benefits, and privileges
2 guaranteed to all employees under law.

3 87. Defendant's conduct, as alleged hereinabove, constitutes unfair competition in
4 violation of § 17200, *et seq.* of the Business & Professions Code.

5 88. Defendant, by engaging in the conduct herein alleged, either knew or in the exercise
6 of reasonable care, should have known that the conduct was unlawful. As such it is a violation of
7 § 17200, *et seq.* of the Business & Professions Code.

8 89. As a proximate result of the above-mentioned acts of Defendant, Plaintiff and
9 others similarly situated have been damaged in a sum as may be proven.

10 90. Unless restrained, Defendant will continue to engage in the unlawful conduct as
11 alleged above. Pursuant to the Business & Professions Code, this court should make such orders
12 or judgments, including the appointment of a receiver, as may be necessary to prevent the use or
13 employment by Defendant, its agents, or employees, of any unlawful or deceptive practices
14 prohibited by the Business & Professions Code, and/or, including but not limited to, restitution
15 and disgorgement of profits which may be necessary to restore Plaintiff and members of the
16 Proposed Class the money Defendant has unlawfully failed to pay.

17 **XIV.**

18 **NINTH CAUSE OF ACTION**

19 **PENALTIES PURSUANT TO LABOR CODE §2699, ET SEQ.**

20 1. Plaintiff, on behalf of herself and all aggrieved employees, realleges and
21 incorporates by reference all previous paragraphs.

22 2. As a result of the acts alleged above and specifically incorporated herein, Plaintiff
23 seeks penalties under Labor Code § 2699, *et seq.* use of Defendant's violation of Labor Code §§
24 201, 202, 203, 204, 210, 226, 226(a), 226.7, 510, 511, 512, 1174, 1174.5, 1194, 1198.5, 1199, and
25 2802; Wage Order 5-2001; and California Code of Regulations, Title 8, Section 11010, which call
26 for civil penalties.

27 3. For each such penalty, Plaintiff and the aggrieved employees are entitled to
28 penalties in an amount to be shown at trial, subject to the following formula:

3. For penalties pursuant to Labor Code § 226(e) for violation of Labor Code § 226(a) in the amount of fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000);

4. For penalties pursuant to Labor Code §§ 201, 202, and 203 for all employees who were terminated or resigned equal to their daily wage times thirty (30) days;

5. An award of prejudgment and post judgment interest;

6. An order enjoining Defendant and its agents, servants, and employees, and all persons acting under, in concert with, or for it from providing Plaintiff with proper wages and/or overtime, meal periods, rest periods, accurate itemized wage statements, and wages upon termination/resignation pursuant to Labor Code §§ 201, 202, 203, 204, 210, 226, 226(a), 226.7, 510, 511, 512, 1194, 1198.5, 1199 and 2802, and IWC 1-2001;

7. For restitution for unfair competition pursuant to Business & Professions Code § 17200, *et seq.*, including disgorgement or profits, in an amount as may be proven;

8. For injunctive relief pursuant to Labor Code § 226(a) requiring Defendant to remedy inaccurate wage statements issued to Plaintiff and the Class;

9. An award providing for payment of costs of suit;

10. An award of attorneys' fees; and

11. Such other and further relief as this Court may deem proper and just.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial of her claims by jury to the extent authorized by law.

DATED: May 19, 2025

KINGSLEY SZAMET EMPLOYMENT
LAWYERS

By

Eric B. Kingsley
Jessi Bulaon
Attorneys for Plaintiff and the Proposed Class

EXHIBIT "1"

KINGSLEY & KINGSLEY

| L A W Y E R S |

September 8, 2022

LABOR & WORKFORCE DEVELOPMENT AGENCY
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612

Balda C. Brewer, Inc.
4501 E Wall Street
Ontario, CA 91761

Re: Nancy Marquez Maldonado a.k.a. Nancy Maldonado Marquez v. Balda C.
Brewer, Inc.
California Labor Code § 2699 Penalties

Gentlepersons:

This office represents Nancy Marquez Maldonado a.k.a. Nancy Maldonado Marquez (“Plaintiff”) and a proposed group of current and former employees working for Balda C. Brewer, Inc, (“Defendant”) in the State of California. The purpose of this letter is to comply with the Private Attorneys General Act of 2004, pursuant to California Labor Code § 2698, *et. seq.* We herein set forth the facts and theories of California Labor Code violations which we allege Defendant engaged in with respect to Plaintiff and all of Defendant’s aggrieved employees.

Plaintiff wishes to bring a representative action on behalf of herself and the State of California as well as on behalf of a group of aggrieved employees defined as: All hourly employees worked for Balda C. Brewer, Inc., directly or through a staffing agency, who are employed or have been employed by Balda C. Brewer, Inc., in the State of California who worked one or more pay periods since one (1) year prior to the date of this letter and continuing to the present. (“aggrieved employees”).

Defendant engaged in a practice of failing to pay wages/overtime pursuant to Labor Code §§ 510, 511, 1194, and 1199. Labor Code §§ 1194 and 1199 require an employer to pay its employees the legal minimum wage and the legal overtime compensation applicable. Labor Code § 510(a) states that eight hours of labor constitutes a day’s work and any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek must be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay.

Labor Code § 511 and IWC Wage Order 1-2001(3)(B) provide, upon the proposal of an employer, for the adoption of an alternative workweek schedule that authorizes work by the affected employees for no longer than 10 hours per day within a 40-hour workweek without the payment

LABOR & WORKFORCE DEVELOPMENT AGENCY

California Labor Code §2699 Penalties

September 8, 2022

Page 2 of 4

to the affected employees of an overtime rate of compensation pursuant to this section.

Furthermore, these statutes state that “all work performed in any workday beyond the schedule established by the agreement up to 12 hours a day or beyond 40 hours per week shall be paid at one and one-half (1 ½) times the employee’s regular rate of pay. All work performed in excess of 12 hours per day and any work in excess of eight (8) hours on those days worked beyond the regularly scheduled number of workdays established by the alternative workweek agreement shall be paid at double the employee’s regular rate of pay. Any alternative workweek agreement adopted pursuant to this section shall provide for not less than four (4) hours of work in any shift. Nothing in this section shall prohibit an employer, at the request of the employee, to substitute one day of work for another day of the same length in the shift provided by the alternative workweek agreement on an occasional basis to meet the personal needs of the employee without the payment of overtime. No hours paid at either one and one-half (1 ½) or double the regular rate of pay shall be included in determining when 40 hours have been worked for the purpose of computing overtime compensation.”

Here, Defendant has had a consistent policy of failing to pay wages and/or overtime to Plaintiff and all aggrieved employees because Defendant failed to adopt a lawful alternative work week schedule for its employees employed through the staffing agencies. The alternative work week schedule it utilized was unlawful and as a result, Plaintiff and all aggrieved employees work more than 40 hours per alternative work week without being paid at one and one-half (1 ½) times Plaintiff and all aggrieved employees’ regular rate of pay. As such, Defendant failed to lawfully adopt an alternative workweek schedule and failed to properly compensate Plaintiff and all aggrieved employees for overtime when they worked over forty hours in a work week.

Labor Code §§ 226.7 and 512 require an employer to pay an additional hour of compensation for each meal period the employer fails to provide. Employees are entitled to a first meal period of at least thirty (30) minutes for shifts over five (5) hours, to be provided within the first five (5) hours of the shift, and a second meal period of at least thirty (30) minutes for shifts over ten (10) hours. If an employee is entitled to a second meal period, it must be provided after no more than ten (10) hours of work. Defendant failed to maintain a policy informing Plaintiff and the aggrieved employees of these rights. Likewise, the Wage Orders (1-2001) state that: An employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than thirty (30) minutes, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived. Pursuant to Labor Code § 226.7(c), if an employer fails to provide an employee with a lawful meal period, the employer must pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each workday that a thirty (30) minute uninterrupted meal period was not provided, was not provided in full, or was not provided in a timely manner.

Here, Defendant failed to apprise Plaintiff and the aggrieved employees of their rights associated with meal periods by way of lawful written policy and failed to provide compliant meal periods.

LABOR & WORKFORCE DEVELOPMENT AGENCY

California Labor Code §2699 Penalties

September 8, 2022

Page 3 of 4

In addition, Defendant failed to provide compliant thirty (30) minute uninterrupted meal periods. Defendant has had a consistent policy of: (1) requiring Plaintiff and the aggrieved employees to take meal breaks that occurred after the first five hours of each shift; (2) required employees to work shifts of greater than five (5) hours without meal periods; (3) required Plaintiff and the aggrieved employees to work shifts over ten (10) hours without providing a second meal period of thirty minutes in length altogether; and (3) failed to pay such employees one (1) hour of pay at the employees regular rate of compensation for each workday that the first and second meal periods were not provided within the first (5) hours of the shift or for shifts over ten (10) hours.

Further, Defendant has maintained an unlawful meal rounding policy wherein it rounded time for an employee's meal break regardless of whether a 30-minute compliant meal period was actually provided under California law. This rounding policy was unlawful and did not account for whether the meal periods were provided, employees took their meal periods at all, took timely meal periods, and/or took meal periods of less than thirty minutes.

Pursuant to Labor Code § 226.7 and Wage Order 1-2001, Defendant failed to provide Plaintiff and the aggrieved employees with rest breaks of not less than ten (10) minutes per four (4) hour work period, or major fraction thereof. Additionally, on a regular and consistent basis, Defendant failed to provide Plaintiff and the aggrieved employees with a third rest period despite regularly requiring Plaintiff and the aggrieved employees to work over ten (10) hours. As such, Defendant failed to provide Plaintiff and the aggrieved employees with compliant rest periods. Further, Plaintiff and the aggrieved employees were not compensated with one (1) hour of wages for each missed rest period as required by Labor Code § 226.7.

Labor Code §§ 226(a)(2) and (9) require that every employer shall semimonthly or at the time of each payment of wages, furnish each of his or her employees, an accurate itemized statement in writing showing the total hours worked by the employee and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. Defendant issued to Plaintiff and the aggrieved employees itemized wage statements that did not include all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee, in violation of Labor Code §§ 226(a)(2) and (9). The itemized wage statements provided to Plaintiff and the aggrieved employees did not include the hours worked at each hourly rate. Defendant failed to indicate the temporary service assignments and the number of hours worked and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee on the wage statements in violation of the Labor Code.

Labor Code § 203 provides that if “an employer willfully fails to pay...any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.” Here, Plaintiff and all aggrieved employees were not paid all wages due upon their separation from Defendant's employ. As such, Plaintiff is an

aggrieved employee and Defendant failed to pay Plaintiff and all aggrieved employees all wages due at the time of termination or within seventy-two (72) hours of their resignation and have failed to pay those sums for thirty (30) days thereafter in violation of Labor Code §203.

We are constrained to move forward with the filing of this complaint alleging causes of action pursuant to Labor Code §§ 201, 202, 203, 226(a), 226.7, 510, 511, 512, 1194 and 1199 with or without the PAGA claim. Thus, any action by the LWDA would not resolve the entirety of the case, and the interest of judicial economy will be served by allowing the case to proceed as a cohesive whole.

Very truly yours,

KINGSLEY & KINGSLEY, APC

By: 

Liane Katzenstein Ly

LKL/lis

- Cc:
1. LWDA Letter filed via Electronic Submission: <https://dir.tfaforms.net/308>
 2. Balda C. Brewer, Inc. via USPS Certified Mail # 7018 1130 0001 4773
 3. Winston Law Group, P.C., 1180 S Beverly Dr, #320, Los Angeles, CA 90035

EXHIBIT "2"



State of California

Labor and Workforce Development Agency /
Department of Industrial Relations

Private Attorneys General Act (PAGA) – Filing

New PAGA Claim Notice

Your Information (Person Who is Filing)

Your First Name *

Liane

Your Last Name *

Ly

Firm Name (if any) *

Kingsley & Kingsley, APC

(Enter "in pro per" if you are representing yourself)

Your Email Address *

service@kingsleykingsley.c

Your Street Name, Number and Suite/Apt *

16133 Ventura Blvd Suite

Your Mobile Phone Number

8189908300

Your City *

Encino

Your Work Phone Number

Your State *

California



Your Zip/Postal Code *

91436

Plaintiff Information

Plaintiff/Aggrieved Employee Name *

Nancy Marquez Maldonado a.k.a. Nanc

Plaintiff/Aggrieved Employee Occupation *

Manufacturer

[Add Additional Plaintiffs](#)

Employer Information

Employer Entity Type

Please select... ▼

Employer Name *

Balda C. Brewer, Inc.

Maximum 80 Character Limit

Employer Street Name, Number and Suite/Apt *

4501 E. Wall Street

Employer City *

Ontario

Employer State *

California ▼

Employer Zip/Postal Code *

91761

Employer Industry *

Other ▼

Employer Industry for "Other" *

Manufacturing

Add additional defendants

☐ Add any entity other than an individual☐ Add an individual/sole proprietor employer

Notice General Information

Estimated Number of Employees Impacted by Violations *

50

Notice Violations – Check All that Apply *

Child Labor – Specify Ages

- ☐ Child Labor
- ☐ Misclassification Employee Classified as Contractor
- ☐ Misclassification NonExempt Classified as Exempt
- ☐ Minimum Wage
- ☒ Overtime
- ☒ Not paid for all hours worked
- ☒ Not paid wages due on termination
- ☐ Other Unpaid Wages
- ☐ Tips or Gratuities
- ☐ Payment or Reimbursement of Employee Expenses
- ☐ Improper Form of Payment Including NSF Checks
- ☐ Kickbacks
- ☒ Meal and Rest Breaks
- ☐ Sick Leave
- ☐ Lactation Accommodation (Labor Code 1030–1033)
- ☐ Not providing required time off, other
- ☐ Pay Discrimination on basis of sex, (Labor Code 1197.5)
- ☐ No Wage Statements
- ☒ Improper or Incomplete Wage Statements
- ☐ Other Notice or Posting or Recordkeeping
- ☐ Public Works (Labor Code 1720 – 1815)
- ☐ Apprenticeship (Labor Code 3070 – 3098)
- ☐ Occupational Safety and Health (Labor Code 6300 et seq)
- ☐ No Workers' Compensation
- ☐ Licensing, Registration, or Permit
- ☐ Unfair Immigration Activities
- ☐ Agricultural Labor Relations
- ☐ Industrial Homework
- ☐ Retaliation for Protected Status or Activity (Specify)
- ☐ Other

PAGA Claim Type – Check All that Apply *

- ☒ Notice asserts one or more Labor Code violations listed in Labor Code 2699.5– not curable subject to 2699.3(a)
- ☐ Notice asserts one or more OSHA violations subject to requirements of 2699.3(b)
- ☐ Includes one or more violations not listed in Labor Code 2699.5 – curable subject to 2699.3(c)

Filing Fee

A filing fee of \$75 is required to file a new PAGA claim notice.

IFP

- ☐ I wish to claim In Forma Pauperis and am attaching a Confidential Request to Waive Court Fees (Judicial Council Court Form FW-001) or similar form to this submission.

Billing information**Billing First Name ***

Eric

Billing Last Name *

Kingsley

Billing Email *

service@kingsleykingsley.c

Billing Phone

8189908300

Billing Street Name, Number and Suite/Apt *

16133 Ventura Blvd Suite 1200

Billing City *

Encino

Billing State *

California

**Billing Zip/Postal Code ***

91436

Credit Card Type ***Credit Card Number ***

CVV Number *

Credit Card Expiration Month *

mm

Credit Card Expiration Year *

yyyy

Notice and Other Attachments

PAGA Claim Notice (must be a .pdf) *

 Balda C Brewer...er 9.8.22.pdf

Other Attachment – (if any) (must be a .pdf)

 No file chosen[Add Another Attachment](#)

Should you have questions regarding this online form, please contact PAGAInfo@dir.ca.gov

IMPORTANT NOTICE OF REDACTION RESPONSIBILITY: All filers must redact: Social Security or taxpayer identification numbers; personal addresses, personal telephone numbers, personal email addresses, dates of birth; names of minor children; & financial account numbers. This requirement applies to all documents, including attachments.

☒ I understand that, if I file, I must comply with the redaction rules consistent with this notice.

Thank you. If you provided an email address with your submission, a confirmation regarding your submission will be emailed to you. Otherwise, you can search for the case to verify that your submission was properly received.

[Click Here](#) to Search Case

From: noreply@salesforce.com on behalf of LWDA DO NOT REPLY <lwdadonotreply@dir.ca.gov>
Sent: Thursday, September 8, 2022 9:23 AM
To: Service Email
Subject: Thank you for submission of your PAGA Case.

External Email!

9/8/2022

LWDA Case No. LWDA-CM-906615-22
Law Firm : Kingsley & Kingsley, APC
Plaintiff Name : Nancy Marquez Maldonado a.k.a. Nancy Maldonado Marquez
Employer: Balda C. Brewer, Inc.
Filing Fee : \$75.00
IFP Claimed : No

Item submitted: Initial PAGA Notice

Thank you for your submission to the Labor and Workforce Development Agency. Please make a note of the LWDA Case No. above as you may need this number for future reference when filing any subsequent documents for this Case.

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website:

https://nam10.safelinks.protection.outlook.com/?url=http%3A%2F%2Flabor.ca.gov%2FPrivate_Attorneys_General_Act.htm&data=05%7C01%7CLealie%40kingsleykingsley.com%7Cca173b2535ee457194e008da91b65f2f%7C121a7875db4eb4c0fb25c5baf6c6ac7a5%7C1%7C0%7C637982509729382041%7CUnknown%7CTWFPbGZsb3d8eyJWljoimc4wLjAwMDAiLCJQIjoiV2luMzliLCJBTiI6IkhWwiLCJXVCi6Mn0%3D%7C3000%7C%7C%7C&sdata=6uA%2FV7UVCDZfDWSaQpR8SaE0hK%2B9BqYWVhZUVBHmc0%3D&reserved=0

From: noreply@salesforce.com on behalf of LWDA DO NOT REPLY <lwdadonotreply@dir.ca.gov>
Sent: Thursday, September 8, 2022 9:23 AM
To: Service Email
Subject: State of California - Department of Industrial Relations Customer Receipt / Purchase Confirmation

External Email!

Thank you for your payment.

Order Information

Merchant: State of California - Department of Industrial Relations

Case Number: LWDA-CM-906615-22

Order Number: ORD-000192760

Total:\$75.00

Card Type: Master Card

Date: 9/8/2022

Billing Information

Name: Eric Kingsley

Email: service@kingsleykingsley.com

Billing Address:

16133 Ventura Blvd Suite 1200

Encino, California

91436

EXHIBIT "3"



16133 Ventura Boulevard, Suite 1200, 
Encino, California 91436
service@kingsleylawyers.com 
www.kingsleylawyers.com 
(818) 990-8300 

January 15, 2025

LABOR & WORKFORCE DEVELOPMENT AGENCY
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612
Via Electronic Mail Submission: <https://dir.govfa.net/310>

Cozen O'Connor
Walter M. Stella
wstella@cozen.com
Brett Greving
breving@cozen.com
44 Montgomery Street, 3rd Floor, Suite 2200
San Francisco, CA 94104
Attorneys for Defendant Balda C. Brewer, Inc.
Via Electronic Mail Submission

Re: Nancy Marquez Maldonado a.k.a. Nancy Maldonado Marquez v. Balda C.
Brewer, Inc.
California Labor Code § 2699 Penalties

Gentlepersons:

This office represents Nancy Marquez Maldonado a.k.a. Nancy Maldonado Marquez (“Plaintiff”) and a proposed group of current and former employees working for Balda C. Brewer, Inc, (“Defendant”) in the State of California. The purpose of this letter is to comply with the Private Attorneys General Act of 2004, pursuant to California Labor Code § 2698, et. seq. We herein set forth the facts and theories of California Labor Code violations which we allege Defendant engaged in with respect to Plaintiff and all of Defendant’s aggrieved employees. This letter shall serve to supplement the notice letter by Kingsley & Kingsley, APC DBA Kingsley Szamet Employment Lawyers on behalf of Nancy Marquez Maldonado on September 8, 2022.

Plaintiff wishes to bring a representative action on behalf of herself and the State of California as well as on behalf of a group of aggrieved employees defined as: All hourly employees worked for Balda C. Brewer, Inc., directly or through a staffing agency, who are employed or have been employed by Balda C. Brewer, Inc., in the State of California who worked one or more pay periods since one (1) year prior to the date of this letter and continuing to the present. (“aggrieved employees”).

LABOR & WORKFORCE DEVELOPMENT AGENCY

California Labor Code §2699 Penalties

January 28, 2025

Page 2 of 5

Defendant engaged in a practice of failing to pay wages/overtime pursuant to Labor Code §§ 510, 511, 1194, and 1199. Labor Code §§ 1194 and 1199 require an employer to pay its employees the legal minimum wage and the legal overtime compensation applicable. Labor Code § 510(a) states that eight hours of labor constitutes a day's work and any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek must be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay.

Defendant failed to timely pay Plaintiff and all aggrieved employees all wages for a payroll period in accordance with Labor Code §§ 204(d) and 210. Plaintiff and the aggrieved employees were not paid within the timeframes required by these statutes. As such, Plaintiff is an aggrieved employee within the meaning of PAGA, and Defendant has violated Labor Code §§ 204(d) and 210 with respect to Plaintiff and all aggrieved employees.

Labor Code § 511 and IWC Wage Order 1-2001(3)(B) provide, upon the proposal of an employer, for the adoption of an alternative workweek schedule that authorizes work by the affected employees for no longer than 10 hours per day within a 40-hour workweek without the payment to the affected employees of an overtime rate of compensation pursuant to this section.

Furthermore, these statutes state that "all work performed in any workday beyond the schedule established by the agreement up to 12 hours a day or beyond 40 hours per week shall be paid at one and one-half (1 ½) times the employee's regular rate of pay. All work performed in excess of 12 hours per day and any work in excess of eight (8) hours on those days worked beyond the regularly scheduled number of workdays established by the alternative workweek agreement shall be paid at double the employee's regular rate of pay. Any alternative workweek agreement adopted pursuant to this section shall provide for not less than four (4) hours of work in any shift. Nothing in this section shall prohibit an employer, at the request of the employee, to substitute one day of work for another day of the same length in the shift provided by the alternative workweek agreement on an occasional basis to meet the personal needs of the employee without the payment of overtime. No hours paid at either one and one-half (1 ½) or double the regular rate of pay shall be included in determining when 40 hours have been worked for the purpose of computing overtime compensation."

Here, Defendant has had a consistent policy of failing to pay wages and/or overtime to Plaintiff and all aggrieved employees because Defendant failed to adopt a lawful alternative work week schedule for its employees employed through the staffing agencies. The alternative work week schedule it utilized was unlawful and as a result, Plaintiff and all aggrieved employees work more than 40 hours per alternative work week without being paid at one and one-half (1 ½) times Plaintiff and all aggrieved employees' regular rate of pay. As such, Defendant failed to lawfully adopt an alternative workweek schedule and failed to properly compensate Plaintiff and all aggrieved employees for overtime when they worked over forty hours in a work week.

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Labor Code §§ 226.7 and 512 require an employer to pay an additional hour of compensation for each meal period the employer fails to provide. Employees are entitled to a first meal period of at least thirty (30) minutes for shifts over five (5) hours, to be provided within the first five (5) hours of the shift, and a second meal period of at least thirty (30) minutes for shifts over ten (10) hours. If an employee is entitled to a second meal period, it must be provided after no more than ten (10) hours of work. Defendant failed to maintain a policy informing Plaintiff and the aggrieved employees of these rights. Likewise, the Wage Orders (1-2001) state that: An employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than thirty (30) minutes, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived. Pursuant to Labor Code § 226.7(c), if an employer fails to provide an employee with a lawful meal period, the employer must pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that a thirty (30) minute uninterrupted meal period was not provided, was not provided in full, or was not provided in a timely manner.

Here, Defendant failed to apprise Plaintiff and the aggrieved employees of their rights associated with meal periods by way of lawful written policy and failed to provide compliant meal periods. In addition, Defendant failed to provide compliant thirty (30) minute uninterrupted meal periods. Defendant has had a consistent policy of: (1) requiring Plaintiff and the aggrieved employees to take meal breaks that occurred after the first five hours of each shift; (2) required employees to work shifts of greater than five (5) hours without meal periods; (3) required Plaintiff and the aggrieved employees to work shifts over ten (10) hours without providing a second meal period of thirty minutes in length altogether; and (3) failed to pay such employees one (1) hour of pay at the employees regular rate of compensation for each workday that the first and second meal periods were not provided within the first (5) hours of the shift or for shifts over ten (10) hours.

Further, Defendant has maintained an unlawful meal rounding policy wherein it rounded time for an employee's meal break regardless of whether a 30-minute compliant meal period was actually provided under California law. This rounding policy was unlawful and did not account for whether the meal periods were provided, employees took their meal periods at all, took timely meal periods, and/or took meal periods of less than thirty minutes.

Pursuant to Labor Code § 226.7 and Wage Order 1-2001, Defendant failed to provide Plaintiff and the aggrieved employees with rest breaks of not less than ten (10) minutes per four (4) hour work period, or major fraction thereof. Additionally, on a regular and consistent basis, Defendant failed to provide Plaintiff and the aggrieved employees with a third rest period despite regularly requiring Plaintiff and the aggrieved employees to work over ten (10) hours. As such, Defendant failed to provide Plaintiff and the aggrieved employees with compliant rest periods. Further, Plaintiff and the aggrieved employees were not compensated with one (1) hour of wages for each missed rest period as required by Labor Code § 226.7.

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Labor Code § 2802 provides that an employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful. During the relevant period, Plaintiff and the aggrieved employees are entitled to reimbursement of all business-related expenses Plaintiff and the aggrieved employees incurred throughout the duration of their employment. Specifically, Defendant has failed to reimburse Plaintiff and the aggrieved employees the cost of using personal cell phones for business related purposes. Plaintiff and the aggrieved employees are required to be available by cell phone and answer/use their cell phones to call, text, and respond to work-related matters while they are off the clock. Defendant fails to reimburse Plaintiff and the aggrieved employees for the costs associated with using these personal cell phones. By failing to provide Plaintiff and the aggrieved employees with cell phones or other method of communication, Defendant has burdened Plaintiff and the aggrieved employees with the cost of using their own cell phones to perform required work.

Plaintiff also brings a claim on behalf of herself only for a violation of Labor Code §§226 and 1198.5. Plaintiff requested the right to review her personnel file and her pay records by sending a letter to Defendant. Defendant refused to provide the requested documentation in violation of these statutes. Thus, Plaintiff Marquez Maldonado is an aggrieved employee within the meaning of PAGA and Defendant has violated Labor Code §§226 and 1198.5 with respect to Plaintiff only.

Labor Code §§ 226(a)(2) and (9) require that every employer shall semimonthly or at the time of each payment of wages, furnish each of his or her employees, an accurate itemized statement in writing showing the total hours worked by the employee and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. Defendant issued to Plaintiff and the aggrieved employees itemized wage statements that did not include all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee, in violation of Labor Code §§ 226(a)(2) and (9). The itemized wage statements provided to Plaintiff and the aggrieved employees did not include the hours worked at each hourly rate. Defendant failed to indicate the temporary service assignments and the number of hours worked and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee on the wage statements in violation of the Labor Code.

Labor Code § 203 provides that if “an employer willfully fails to pay...any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.” Here, Plaintiff and all aggrieved employees were not paid all wages due upon their separation from Defendant’s employ. As such, Plaintiff is an aggrieved employee and Defendant failed to pay Plaintiff and all aggrieved employees all wages due at the time of termination or within seventy-two (72) hours of their resignation and have failed to pay those sums for thirty (30) days thereafter in violation of Labor Code §203.

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We are constrained to move forward with the filing of this complaint alleging causes of action pursuant to Labor Code §§ 201, 202, 203, 204, 210, 226, 226(a), 226.7, 510, 511, 512, 1194, 1198.5, 1199, and 2802 with or without the PAGA claim. Thus, any action by the LWDA would not resolve the entirety of the case, and the interest of judicial economy will be served by allowing the case to proceed as a cohesive whole.

Very truly yours,

KINGSLEY SZAMET EMPLOYMENT
LAWYERS

By: 

Eric B. Kingsley

[EBK/JB/ljs]

Cc: 1. LWDA Letter filed via Electronic Submission: <https://dir.govfa.net/310>

EXHIBIT "4"



State of California
Labor and Workforce Development Agency /
Department of Industrial Relations

Private Attorneys General Act (PAGA) – Filing

Amended PAGA Claim Notice

PAGA Number (LWDA-CM-) : *

Please enter only the numbers after "LWDA-CM-" in the following format, "XXXXXXXX-XX".

[Search for PAGA Case number](#)

Your Information (Attorney or Employee – Whoever is Filing)

Your First Name *

Your Last Name *

Your Email Address *

Your Street Name, Number and Suite/Apt *

Your Mobile Phone Number

Your City *

Your Work Phone Number

Your State *

Your Zip/Postal Code *

Amended Notice Detail

Please provide the details of the amendments to the original notice. *

- ☒ Adding additional claims
- ☐ Adding additional corporate defendants
- ☐ Adding additional Individual/Sole proprietor defendants
- ☐ Adding additional plaintiffs
- ☐ Other (please specify)

Notice Violations – Check All that Apply *

- ☐ Child Labor
- ☐ Misclassification Employee Classified as Contractor
- ☐ Misclassification NonExempt Classified as Exempt
- ☐ Minimum Wage
- ☐ Overtime
- ☐ Not paid for all hours worked
- ☐ Not paid wages due on termination
- ☐ Other Unpaid Wages
- ☐ Tips or Gratuities
- ☐ Payment or Reimbursement of Employee Expenses
- ☐ Improper Form of Payment Including NSF Checks
- ☐ Kickbacks
- ☐ Meal and Rest Breaks
- ☐ Sick Leave
- ☐ Lactation Accommodation (Labor Code 1030–1033)
- ☐ Not providing required time off, other
- ☐ Pay Discrimination on basis of sex, (Labor Code 1197.5)
- ☐ No Wage Statements
- ☐ Improper or Incomplete Wage Statements
- ☐ Other Notice or Posting or Recordkeeping
- ☐ Public Works (Labor Code 1720 – 1815)
- ☐ Apprenticeship (Labor Code 3070 – 3098)
- ☐ Occupational Safety and Health (Labor Code 6300 et seq)
- ☐ No Workers' Compensation
- ☐ Licensing, Registration, or Permit
- ☐ Unfair Immigration Activities
- ☐ Agricultural Labor Relations
- ☐ Industrial Homework
- ☐ Retaliation for Protected Status or Activity (Specify)
- ☒ Other

Child Labor – Specify Ages**Provide Details of Other Violation *****Other(Maybe Multiple)**

- ☐ Other Violation

PAGA Claim Type – Check All that Apply *

PAGA Claim Type – Check All that Apply *

- ☒ Notice asserts one or more Labor Code violations listed in Labor Code 2699.5– not curable subject to 2699.3(a)
- ☐ Notice asserts one or more OSHA violations subject to requirements of 2699.3(b)
- ☐ Includes one or more violations not listed in Labor Code 2699.5 – curable subject to 2699.3(c)

Amended Notice

Amended Notice *

Amended LW...submitted).pdf

Other Attachment (if any) (must be a .pdf)

No file chosen

[Add Another Attachment](#)

Should you have questions regarding this online form, please contact PAGAInfo@dir.ca.gov

IMPORTANT NOTICE OF REDACTION RESPONSIBILITY: All filers must redact: Social Security or taxpayer identification numbers; personal addresses, personal telephone numbers, personal email addresses, dates of birth; names of minor children; & financial account numbers. This requirement applies to all documents, including attachments.

☒ I understand that, if I file, I must comply with the redaction rules consistent with this notice.

Thank you. If you provided an email address with your submission, a confirmation regarding your submission will be emailed to you. Otherwise, you can search for the case to verify that your submission was properly received.

[Click Here](#) to Search Case

From: [DIR PAGA Unit](#)
To: [Service Email](#)
Subject: Thank you for your Amended PAGA Claim Notice Submission.
Date: Tuesday, January 28, 2025 11:13:13 AM

External Email!

01/28/2025 11:12:45 AM

Thank you for your submission to the Labor and Workforce Development Agency.

Item submitted: Amended PAGA Claim Notice

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: http://labor.ca.gov/Private_Attorneys_General_Act.htm