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Superior Court of California,
County of San Diego
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11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 COUNTY OF SAN DIEGO

13 ROSA M. PEREZ, in her capacity as the
14 State of California's designated proxy
15 under the Private Attorneys General Act

16 Plaintiff,

17 vs.

18 SPROUTS FARMERS MARKET, LLC,
19 a Delaware Limited Liability Company;
20 SF MARKETS, LLC, a California
21 Limited Liability Company; and DOES 1
22 through 50,
23 Defendants.

Case No.

37-2022-00052163-CU-OE-CTL

REPRESENTATIVE ACTION

**COMPLAINT FOR VIOLATIONS OF
THE PRIVATE ATTORNEYS
GENERAL ACT (Labor Code § 2698,
et seq.)**

1 Plaintiff ROSA M. PEREZ, in her capacity as the State of California's
2 designated proxy under the Private Attorneys General Act, alleges the following:

3 **NATURE OF THE ACTION**

4 1. Pursuant to the Private Attorneys General Act ("PAGA"), incorporated in
5 Labor Code §§ 2698, 2699, *et seq.*, Plaintiff brings this representative action against
6 Defendants SPROUTS FARMERS MARKET, LLC, SF MARKETS, LLC, and
7 DOES 1 through 50 (all defendants hereinafter collectively referred to as
8 "Defendants") for wage and hour violations of the California Labor Code and the
9 applicable Industrial Welfare Commission Wage Order (the "IWC Wage Order").

10 2. Pursuant to Labor Code § 2699, *et seq.*, any provision of the Labor Code
11 that provides for a civil penalty to be assessed and collected by the Labor and
12 Workforce Development Agency ("LWDA") or any of its departments, divisions,
13 commissions, boards, agencies or employees for violation of the code may, as an
14 alternative, be recovered through a civil action brought by an aggrieved employee on
15 behalf of himself or herself and other current or former employees pursuant to the
16 procedures specified in Labor Code § 2699.3.

17 3. Through this representative action, Plaintiff seeks to recover civil penalties
18 under the PAGA for violations committed against all current and former California
19 employees ("Represented Employees").

20 4. No class certification is required in an action under the PAGA. (*Arias v.*
21 *Superior Court* (2009) 46 Cal.4th 969.)

22 **JURISDICTION AND VENUE**

23 5. Pursuant to Article VI, section 10 of the California Constitution, subject
24 matter jurisdiction is proper in the Superior Court of California, County of San Diego,
25 State of California because Plaintiff alleges claims arising under California law.

26 6. This Court has jurisdiction over Defendants because each is believed to
27 be an association, corporation, business entity, or individual that conducts substantial
28 business in the State of California, County of San Diego.

7. This Court has jurisdiction over Plaintiff's claim for civil penalties under the PAGA.

8. Pursuant to California Code of Civil Procedure § 395, venue is proper in the Superior Court of California for the County of San Diego because this is where the wrongful misconduct alleged herein occurred.

THE PARTIES

9. The State of California is the real party in interest in a PAGA action. (*Kim v. Reins Int'l California, Inc.* (2020) 9 Cal.5th 73, 81 [the “government entity on whose behalf the plaintiff files suit is always the real party in interest.”].)

10. Plaintiff ROSA PEREZ (“Plaintiff”) is an individual who resides in the County of San Diego, California.

11. Defendant SPROUTS FARMERS MARKET, LLC (“SFM LLC”) is a Delaware limited liability company doing business throughout the state of California.

12. Defendant SF MARKETS, LLC (“SF LLC”) is a California limited liability company doing business throughout the state of California.

13. The true names and capacities, whether individual, corporate, associate or otherwise of the Defendant named herein as DOES 1 through 50, are unknown to Plaintiff at this time. Plaintiff therefore sues said Defendants by such fictitious names pursuant to California Code of Civil Procedure § 474. Plaintiff will seek leave to amend the operative complaint (“Complaint”) to allege the true names and capacities of DOES 1 through 50 when their names are ascertained. Plaintiff is informed and beliefs, and based thereon alleges, that each of the DOE Defendants is in some manner liable to Plaintiff for the events and actions alleged herein.

14. Plaintiff is informed and beliefs, and based thereon alleges, that at all times, each Defendant was acting as an agent, joint venturer, integrated enterprise and/or alter ego for each of the other defendants and each were co-conspirators with respect to the acts and the wrongful conduct alleged herein so that each is responsible for the acts of the other in connection with the conspiracy and in proximate

1 connection with the other defendants.

2 15. Plaintiff is informed and beliefs, and based thereon alleges, that each
3 Defendant was acting partly within and partly without the scope and course of their
4 employment, and was acting with the knowledge, permission, consent, and
5 ratification of every other Defendant.

6 16. At all material times, Defendants were and/or are Represented
7 Employees' employers or persons acting on behalf of Represented Employees'
8 employer, under California law, the IWC Wage Order, and Labor Code §§ 558 and
9 558.1 and thus are jointly and severally liable for the violations alleged herein and
10 any amounts awarded and/or recoverable as a result of this action.

11 **GENERAL ALLEGATIONS**

12 **RE: PAGA REPRESENTATIVE ACTION CLAIMS**

13 17. Defendants are generally in the grocery store business.

14 18. During all times relevant, Defendants employed Plaintiff in California as
15 a nonexempt employee.

16 19. The named Plaintiff is an "aggrieved employee" because Defendants
17 employed her in California and she experienced one or more of the alleged Labor
18 Code violations committed against her, and therefore the named Plaintiff is properly
19 suited to act on behalf the state, and collect civil penalties for all violations committed
20 against the Represented Employees, who are also aggrieved employees as defined by
21 Labor Code § 2699(c).

22 20. On information and belief, current and former employees of Defendants
23 were subject to wage and hour violations by Defendants, specifically by Defendants'
24 violations of Labor Code §§ 246, 246(l), 226(b), 226(c), 432, 1198.5, 2698, and 2699,
25 *et seq.*

26 21. California law provides that an aggrieved employee may file a
27 representative action under the PAGA against an employer for civil penalties in
28 connection with violations of the Labor Code and Wage Order.

1 **EXHAUSTION OF ADMINISTRATIVE REQUIREMENTS**

2 22. On October 11, 2022, Plaintiff, via counsel, sent the statutorily required
3 notice to the LWDA (“PAGA Notice”), indicating that Plaintiff intends to pursue
4 claims against Defendants for violations of the Labor Code.

5 23. On October 11, 2022, Plaintiff, via counsel, sent a copy of the PAGA
6 Notice to the named Defendants via certified mail.

7 24. The statutory period expired since Plaintiff sent the PAGA Notice to the
8 LWDA and LWDA did not serve Plaintiff with a notice of its intent to assume
9 jurisdiction over the applicable penalty claims and did not provide notice as set forth
10 in Labor Code § 2699.3(a)(2)(A) and, thus, Plaintiff has exhausted the administrative
11 requirements under the PAGA.

12 **REPRESENTATIVE ACTION (i.e., PAGA) CLAIMS**

13 25. This representative action generally concerns “**All current or former**
14 **nonexempt employees Defendants employed in the state of California since**
15 **October 11, 2021.**”

16 26. California law provides that an employee may file an action against an
17 employer for penalties in connection with violations of the Labor Code and Wage
18 Orders under the PAGA. (*See* Lab. Code §§ 2699, *et seq.*)

19 27. At all material times, Defendants were and/or are Represented
20 Employees’ employers or persons acting on behalf of Represented Employees’
21 employer, within the meaning of California Labor Code § 558.1, and, as such, are
22 subject to penalties for each violation committed.

23 28. As set forth in detail above, based on the analysis and investigation of
24 the Plaintiff’s claims, Plaintiff’s attorneys sent the appropriate notice to the LWDA
25 and to Defendants informing Defendants of Plaintiff’s intent to pursue a PAGA
26 action.

27 ///

28 ///

1 **FIRST CAUSE OF ACTION**

2 **(Representative Claim for Civil Penalties Under the PAGA for Violations of**
3 **Labor Code §§ 246 and 246(l) against all Defendants)**

4 29. Plaintiff re-alleges and incorporates by reference the foregoing
5 allegations as though set forth herein.

6 30. Under Labor Code §§ 246 and 246(l), employers in California must
7 provide employees with paid sick leave to be paid at a specified rate of pay which
8 must factor in additional earnings during a given pay period wherein such leave is
9 used.

10 31. During their employment, Plaintiff and Represented Employees earned
11 additional nondiscretionary compensation, such as, for example, shift differentials.

12 32. Upon information and belief, Defendants paid sick leave at the incorrect
13 rate of pay resulting in the underpayment of wages.

14 33. By way of one example, Defendants failed to appropriately include
15 additional nondiscretionary payments and compensation—including but not limited to
16 shift differentials—when computing the appropriate rate of pay for sick leave wages.

17 34. The PAGA imposes upon Defendants, and each of them, civil penalties
18 for violating Labor Code §§ 246 and 246(l).

19 35. Civil penalties under the PAGA are equitable in nature. (*Nationwide*
20 *Biweekly Admin., Inc. v. Superior Ct. of Alameda Cty.*, (2020) 9 Cal.5th 279.)

21 36. Labor Code § 2699(f) imposes upon Defendants, and each of them, civil
22 penalties of one hundred dollars (\$100) per pay period, per aggrieved employee for
23 initial violations, and two hundred dollars (\$200) per pay period, per aggrieved
24 employee for subsequent violations for all Labor Code provisions for which a civil
25 penalty is not specifically provided.

26 37. Pursuant to the PAGA, Labor Code § 2699(f), and/or any other
27 applicable statute, Plaintiff is seeking civil penalties against Defendants in an amount
28 to be shown according to proof.

38. Pursuant to Labor Code § 248.5, if applicable herein, Plaintiff seeks to recover attorneys' fees, costs, equitable relief in the form of civil penalties, in an amount to be shown according to proof.

39. Pursuant to the PAGA, and/or Labor Code § 2699(g), Plaintiff seeks to recover reasonable attorneys' fees, costs, and filing fees paid to the LWDA in an amount to be shown according to proof.

SECOND CAUSE OF ACTION

(Representative Claims for Civil Penalties Under the PAGA for Violation of Labor Code §§ 226(b), 226(c), 1198.5, and 432 against all Defendants)

40. Plaintiff re-alleges and incorporates by reference the foregoing allegations as though set forth herein.

41. Labor Code § 226(b) requires, in pertinent part, that “An employer that is required by this code or any regulation adopted pursuant to this code to keep the information required by subdivision (a) shall afford current and former employees the right to inspect or copy records pertaining to their employment, upon reasonable request to the employer. The employer may take reasonable steps to ensure the identity of a current or former employee. If the employer provides copies of the records, the actual cost of reproduction may be charged to the current or former employee.” (Labor Code § 226(b).)

42. Labor Code § 226(c) requires, in pertinent part, that “An employer who receives a written or oral request to inspect or copy records pursuant to subdivision (b) pertaining to a current or former employee shall comply with the request as soon as practicable, but no later than 21 calendar days from the date of the request. A violation of this subdivision is an infraction. Impossibility of performance, not caused by or a result of a violation of law, shall be an affirmative defense for an employer in any action alleging a violation of this subdivision. An employer may designate the person to whom a request under this subdivision will be made.” (Labor Code § 226(c).)

1 43. Labor Code § 432 requires employers doing business in California to
2 provide current and former employees copies of all written instruments they sign
3 upon request.

4 44. Labor Code § 1198.5(b)(1) provides, in pertinent part: “The employer
5 shall make the contents of those personnel records available for inspection to the
6 current or former employee, or his or her representative, at reasonable intervals and at
7 reasonable times, but not later than 30 calendar days from the date the employer
8 receives a written request.”

9 45. On July 11, 2022, Plaintiff, through counsel, sent a letter to Defendants
10 requesting copies of her payroll and personnel records.

11 46. Defendants failed to produce the foregoing requested records.

12 47. On August 17, 2022, Plaintiff, through counsel, sent a second letter to
13 Defendants requesting copies of her payroll and personnel records.

14 48. Again, Defendants failed to produce the requested records.

15 49. On August 29, 2022, Plaintiff, through counsel, sent a third letter to
16 Defendants, requesting copies of her payroll and personnel records.

17 50. On August 31, 2022, Defendants untimely produced some, but not all
18 responsive records.

19 51. By way of one example, Defendants failed to produce Plaintiff’s
20 arbitration agreement and W-2 forms.

21 52. Defendants violated Labor Code §§ 226(b), 226(c), 432, and 1198.5 by
22 failing to timely produce the requested records.

23 53. Upon information and belief, Defendants committed, and continue to
24 commit, the same violations against other Aggrieved Employees who request or
25 requested such records.

26 54. The PAGA imposes upon Defendants, and each of them, civil penalties
27 for violating Labor Code §§ 226(b), 226(c), 432, and 1198.5.

28 55. Labor Code § 2699(f) imposes upon Defendants, and each of them, civil

1 penalties of one hundred dollars (\$100) per pay period, per aggrieved employee for
2 initial violations, and two hundred dollars (\$200) per pay period, per aggrieved
3 employee for subsequent violations for all Labor Code provisions for which a civil
4 penalty is not specifically provided.

5 56. Plaintiff is seeking civil penalties against Defendants under the PAGA,
6 including Labor Code §§ 2699(f), 226.3, and/or any other applicable statute allowing
7 recovery of civil penalties under the PAGA in an amount to be shown according to
8 proof.

9 57. Pursuant to the PAGA, and/or Labor Code § 2699(g), Plaintiff seeks to
10 recover attorneys' fees, costs, and filing fees paid to the LWDA in an amount to be
11 shown according to proof.

12 **PRAYER FOR RELIEF**

13 WHEREFORE, Plaintiff prays for a judgment against Defendants as follows:

- 14 1. An award of civil penalties pursuant to the PAGA and/or other applicable
15 laws;
- 16 2. An award of reasonable attorneys' fees, costs, and filing fees paid to the
17 LWDA pursuant to the PAGA, California Labor Code § 2699(g), and/or other
18 applicable law;
- 19 3. Post-judgment interest as provided by law; and
- 20 4. Such other and further relief that the Court may deem just and proper.

21
22 Dated: December 30, 2022

Law Office of Thomas D. Rutledge

23
24 By: Thomas D. Rutledge

25 Thomas D. Rutledge
26 Attorney for Plaintiff
27 ROSA PEREZ
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