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**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**IN AND FOR THE COUNTY OF RIVERSIDE**

VICTOR BARCENAS, on behalf of the  
State of California, as a private attorney  
general,

Plaintiff,

vs.

BESHAY FOODS, INC., a California  
Corporation; and DOES 1 through 50,  
inclusive,

Defendants.

Case No. CVRI 2301510

**REPRESENTATIVE ACTION  
COMPLAINT FOR:**

1. Civil Penalties Pursuant to Labor Code § 2699, *et seq.* for violations of Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 218, 221, 226(a), 226.7, 227.3, 246 *et seq.*, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 11070(14) (Failure to Provide Seating), and the applicable Wage Order(s).

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

### 6 **INTRODUCTION**

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

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

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

### 22 **THE PARTIES**

23 4. Beshay Foods, Inc. (“DEFENDANT”) is a California corporation that at all  
24 relevant times mentioned herein conducted and continues to conduct substantial business in the  
25 state of California.

26 5. DEFENDANT owns and operate fast food restaurants in California.

27 6. PLAINTIFF has been employed by DEFENDANT in California since May of  
28

1 2022 and has been at all times classified by DEFENDANT as a non-exempt employee, paid on  
2 an hourly basis, and entitled to the legally required meal and rest periods and payment of  
3 minimum and overtime wages due for all time worked.

4 7. PLAINTIFF, and such persons that may be added from time to time who satisfy  
5 the requirements and exhaust the administrative procedures under the Private Attorney General  
6 Act, brings this Representative Action on behalf of the State of California with respect to  
7 himself and all individuals who are or previously were employed by DEFENDANT in  
8 California, including any employees staffed with DEFENDANT by a third party, and classified  
9 as non-exempt employees ("AGGRIEVED EMPLOYEES") during the time period of January  
10 3, 2022 until a date as determined by the Court (the "PAGA PERIOD").

11 8. PLAINTIFF, on behalf of himself and all AGGRIEVED EMPLOYEES  
12 presently or formerly employed by DEFENDANT during the PAGA PERIOD, brings this  
13 representative action pursuant to Labor Code § 2699, *et seq.* seeking fixed civil penalties for  
14 DEFENDANT's violation of California Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 218,  
15 221, 226(a), 226.7, 227.3, 246 *et seq.*, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198,  
16 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B),  
17 California Code of Regulations, Title 8, Section 1 1070(14) (Failure to Provide Seating), and  
18 the applicable Wage Order(s). Based upon the foregoing, PLAINTIFF and all  
19 AGGRIEVED EMPLOYEES are aggrieved employees within the meaning of Labor Code §  
20 2699, *et seq.*

21 9. The true names and capacities, whether individual, corporate, subsidiary,  
22 partnership, associate or otherwise of defendants DOES 1 through 50, inclusive, are  
23 presently unknown to PLAINTIFF who therefore sues these Defendants by such fictitious  
24 names pursuant to Cal. Civ. Proc. Code § 474. PLAINTIFF will seek leave to amend this  
25 Complaint to allege the true names and capacities of Does 1 through 50, inclusive, when  
26 they are ascertained. PLAINTIFF is informed and believes, and based upon that information  
27 and belief alleges, that the Defendants named in this Complaint, including DOES 1 through  
28

1 50, inclusive, are responsible in some manner for one or more of the events and happenings  
2 that proximately caused the injuries and damages hereinafter alleged.

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

### 11 THE CONDUCT

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

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

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

13 13. The second component of PLAINTIFF's and the AGGRIEVED  
14 EMPLOYEES' compensation is DEFENDANT's non-discretionary incentive program that  
15 paid PLAINTIFF and the AGGRIEVED EMPLOYEES incentive wages based on their  
16 performance for DEFENDANT. The non-discretionary incentive program provided all  
17 employees paid on an hourly basis with incentive compensation when the employees met the  
18 various performance goals set by DEFENDANT. However, when calculating the regular  
19 rate of pay in order to pay overtime and meal and rest break premiums to PLAINTIFF and  
20 the AGGRIEVED EMPLOYEES, DEFENDANT failed to include the incentive  
21 compensation as part of the employees' "regular rate of pay" for purposes of calculating  
22 overtime pay and meal and rest break premium pay. Management and supervisors described  
23 the incentive program to potential and new employees as part of the compensation package.  
24 As a matter of law, the incentive compensation received by PLAINTIFF and the  
25 AGGRIEVED EMPLOYEES must be included in the "regular rate of pay." The failure to  
26 do so has resulted in a underpayment of overtime compensation and meal and rest break  
27 premiums to PLAINTIFF and the AGGRIEVED EMPLOYEES by DEFENDANT.  
28

1           14. As a result of their rigorous work schedules, PLAINTIFF and the  
2 AGGRIEVED EMPLOYEES were from time to time unable to take thirty (30) minute off  
3 duty meal breaks and were not fully relieved of duty for their meal periods. PLAINTIFF  
4 and the AGGRIEVED EMPLOYEES were required from time to time to perform work as  
5 ordered by DEFENDANT for more than five (5) hours during some shifts without receiving  
6 a meal break. Further, DEFENDANT from time to time fails to provide PLAINTIFF and  
7 AGGRIEVED EMPLOYEES with a second off-duty meal period for some workdays in  
8 which these employees were required by DEFENDANT to work ten (10) hours of work.  
9 DEFENDANT also engaged in the practice of rounding the meal period times to avoid  
10 paying penalties to PLAINTIFF and the AGGRIEVED EMPLOYEES. PLAINTIFF and the  
11 AGGRIEVED EMPLOYEES therefore forfeit meal breaks without additional compensation  
12 and in accordance with DEFENDANT's corporate policy and practice.

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

1 an employee from taking a brief walk - five minutes out, five minutes back. Here,  
2 DEFENDANT's policy restricted PLAINTIFF and the AGGRIEVED EMPLOYEES from  
3 unconstrained walks and is unlawful based on DEFENDANT's rule which states  
4 PLAINTIFF and the AGGRIEVED EMPLOYEES cannot leave the work premises during  
5 their rest period.

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

21 17. From time to time, DEFENDANT also failed to provide PLAINTIFF and the  
22 AGGRIEVED EMPLOYEES with complete and accurate wage statements which failed to  
23 show, among other things, the correct gross and net wages earned. Cal. Lab. Code § 226  
24 provides that every employer shall furnish each of his or her employees with an accurate  
25 itemized wage statement in writing showing, among other things, gross wages earned and all  
26 applicable hourly rates in effect during the pay period and the corresponding amount of time  
27 worked at each hourly rate. PLAINTIFF and the AGGRIEVED EMPLOYEES were paid on  
28 an hourly basis. As such, the wage statements should reflect all applicable hourly rates

1 during the pay period and the total hours worked, and the applicable pay period in which the  
2 wages were earned pursuant to California Labor Code Section 226(a). The wage statements  
3 DEFENDANT provided to PLAINTIFF and the AGGRIEVED EMPLOYEES failed to  
4 identify such information. More specifically, the wage statements failed to identify the  
5 accurate total hours worked each pay period. When the hours shown on the wage statements  
6 were added up, they did not equal the actual total hours worked during the pay period in  
7 violation of Cal. Lab. Code 226(a)(2). Additionally, DEFENDANT violates Cal. Lab. Code  
8 226(a)(8) by failing to list the correct name of the legal entity that employs PLAINTIFF and  
9 other AGGRIEVED EMPLOYEES. Aside, from the violations listed above in this  
10 paragraph, DEFENDANT failed to issue to PLAINTIFF an itemized wage statement that  
11 lists all the requirements under California Labor Code 226 *et seq.* As a result, DEFENDANT  
12 from time to time provided PLAINTIFF and the AGGRIEVED EMPLOYEES with wage  
13 statements which violated Cal. Lab. Code § 226.

14 18. Cal. Lab. Code § 204(d) provides, the requirements of this section shall be  
15 deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if  
16 the wages are paid not more than seven (7) calendar days following the close of the payroll  
17 period. Cal. Lab. Code § 210 provides:

18 in [I]n addition to, and entirely independent and apart from, any other penalty provided  
19 this article, every person who fails to pay the wages of each employee as provided in  
20 Sections. . . .204. . .shall be subject to a civil penalty as follows: (1) For any initial  
21 violation, one hundred dollars (\$100) for each failure to pay each employee; (2) For  
22 each subsequent violation, or any willful or intentional violation, two hundred dollars  
23 (\$200) for each failure to pay each employee, plus 25 percent of the amount  
24 unlawfully withheld.

25 19. DEFENDANT from time to time fails to pay PLAINTIFF and the  
26 AGGRIEVED EMPLOYEES within seven (7) days of the close of the payroll period in  
27 accordance with Cal. Lab. Code § 204(d).

28 20. DEFENDANT underpays sick pay wages to PLAINTIFF and the  
AGGRIEVED EMPLOYEES by failing to pay such wages at the regular rate of pay in  
violation of Cal. Lab. Code Section 246. Specifically, PLAINTIFF and other non-exempt  
employees earn non-discretionary remuneration. Rather than pay sick pay at the regular rate

1 of pay, DEFENDANT underpays sick pay to PLAINTIFF and the AGGRIEVED  
2 EMPLOYEES at their base rates of pay.

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

7 22. DEFENDANT violated Cal. Lab. Code Section 246 by failing to pay sick pay  
8 at the regular rate of pay. PLAINTIFF and the AGGRIEVED EMPLOYEES routinely  
9 earned non-discretionary incentive wages which increased their regular rate of pay.  
10 However, when sick pay was paid, it was paid at the base rate of pay for PLAINTIFF and  
11 the AGGRIEVED EMPLOYEES, as opposed to the correct, higher regular rate of pay, as  
12 required under Cal. Lab. Code Section 246.

13 23. As a pattern and practice, DEFENDANT regularly failed to pay PLAINTIFF  
14 and the AGGRIEVED EMPLOYEES their correct wages and accordingly owe waiting time  
15 penalties pursuant to Cal. Lab. Code Section 203. Further, PLAINTIFF is informed and  
16 believes and based thereon alleges that such failure to pay sick pay at regular rate was  
17 willful, such that the AGGRIEVED EMPLOYEES whose employment has separated are  
18 entitled to waiting time penalties pursuant to Cal. Lab. Code Sections 201-203.

19 24. Pursuant to Cal. Lab. Code Section 221, "It shall be unlawful for any employer  
20 to collect or receive from an employee any part of wages theretofore paid by said employer  
21 to said employee." DEFENDANT fails to pay all compensation due to PLAINTIFF and the  
22 AGGRIEVED EMPLOYEES, made unlawful deductions from compensation payable to  
23 PLAINTIFF and the AGGRIEVED EMPLOYEES, fails to disclose all aspects of the  
24 deductions from compensation payable to PLAINTIFF and the AGGRIEVED  
25 EMPLOYEES, and thereby fails to pay these employees all wages due at each applicable  
26 pay period and upon termination.

27 25. DEFENDANT intentionally and knowingly fails to reimburse and indemnify  
28 PLAINTIFF and the AGGRIEVED EMPLOYEES for required business expenses incurred

1 by the PLAINTIFF and the AGGRIEVED EMPLOYEES in direct consequence of  
2 discharging their duties on behalf of DEFENDANT. Under California Labor Code Section  
3 2802, employers are required to indemnify employees for all expenses incurred in the course  
4 and scope of their employment. Cal. Lab. Code § 2802 expressly states that "an employer  
5 shall indemnify his or her employee for all necessary expenditures or losses incurred by the  
6 employee in direct consequence of the discharge of his or her duties, or of his or her  
7 obedience to the directions of the employer, even though unlawful, unless the employee, at  
8 the time of obeying the directions, believed them to be unlawful."

9 26. In the course of their employment PLAINTIFF and the AGGRIEVED  
10 EMPLOYEES as a business expense, were required by DEFENDANT to use their own  
11 personal cellular phones as a result of and in furtherance of their job duties as employees for  
12 DEFENDANT but are not reimbursed or indemnified by DEFENDANT for the cost  
13 associated with the use of their personal cellular phones for DEFENDANT's benefit.  
14 Specifically, PLAINTIFF and the AGGRIEVED EMPLOYEES were required by  
15 DEFENDANT to use their personal cellular phones. As a result, in the course of their  
16 employment with DEFENDANT, PLAINTIFF and the AGGRIEVED EMPLOYEES  
17 incurred unreimbursed business expenses which included, but were not limited to, costs  
18 related to the use of their personal cellular phones all on behalf of and for the benefit of  
19 DEFENDANT.

20 27. In violation of the applicable sections of the California Labor Code and the  
21 requirements of the applicable Industrial Welfare Commission ("IWC") Wage Order,  
22 DEFENDANT as a matter of company policy, practice and procedure, intentionally,  
23 knowingly and systematically failed to provide PLAINTIFF and the other AGGRIEVED  
24 EMPLOYEES suitable seating when the nature of these employees' work reasonably  
25 permitted sitting.

26 28. DEFENDANT knew or should have known that PLAINTIFF and other  
27 AGGRIEVED EMPLOYEES were entitled to suitable seating and/or were entitled to sit  
28 when it did not interfere with the performance of their duties, and that DEFENDANT did

1 not provide suitable seating and/or did not allow them to sit when it did not interfere with  
2 the performance of their duties.

3 29. By reason of this conduct applicable to PLAINTIFF and all AGGRIEVED  
4 EMPLOYEES, DEFENDANT violated California Labor Code Section 1198 and Wage  
5 Order 4-2001, Section 14 by failing to provide suitable seats. PLAINTIFF seeks penalties  
6 on behalf of PLAINTIFF and other AGGRIEVED EMPLOYEES as provided herein.  
7 Providing suitable seating is the DEFENDANT's burden. As a result of DEFENDANT's  
8 intentional disregard of the obligation to meet this burden, DEFENDANT violated the  
9 California Labor Code and regulations promulgated thereunder as herein alleged.

10 30. The employment of some AGGRIEVED EMPLOYEES has terminated and  
11 DEFENDANT has not tendered payment of all wages owed as required by law.  
12 Additionally, at all times during the term of PLAINTIFF's employment with DEFENDANT,  
13 the AGGRIEVED EMPLOYEES earned and accrued vested vacation and holiday time on  
14 the date of their termination pursuant to DEFENDANT's uniform vacation policies and  
15 applicable California law. The amount of vacation pay the AGGRIEVED EMPLOYEES  
16 earned and accumulated is evidenced by DEFENDANT's business records. Additionally,  
17 DEFENDANT also underpaid accrued vested vacation wages to the AGGRIEVED  
18 EMPLOYEES by failing to pay such wages at the regular rate of pay and more specifically  
19 the final rate of pay that included all non-discretionary incentive compensation. Rather than  
20 pay vacation wages at the regular rate of pay, DEFENDANT underpaid vacation wages to  
21 the AGGRIEVED EMPLOYEES at their base rates of pay, instead of including all of the  
22 AGGRIEVED EMPLOYEES' non-discretionary incentive compensation into the vacation  
23 wage payment calculations. DEFENDANT failed to specify in DEFENDANT's written  
24 vacation policy the rate at which PLAINTIFF and other AGGRIEVED EMPLOYEES would  
25 be paid vacation upon leaving employment with DEFENDANT. As a result of  
26 DEFENDANT's unlawful practice, policy and procedure to deny paying the AGGRIEVED  
27 EMPLOYEES all of their vested vacation and holiday time, DEFENDANT failed to pay  
28 some of the AGGRIEVED EMPLOYEES all vested vacation time as wages due upon

1 employment termination, in violation of the California Labor Code, Sections 201, 202, 203  
2 and 227.3. Similarly, DEFENDANT underpaid waiting time penalties to the AGGRIEVED  
3 EMPLOYEES at their base rates of pay, instead of including all of the AGGRIEVED  
4 EMPLOYEES' non-discretionary compensation into the waiting time penalty calculations.  
5 This failure by DEFENDANT is believed to be the result of DEFENDANT's unlawful,  
6 unfair and deceptive refusal to provide compensation for earned, accrued and vested  
7 vacation and holiday time, as well as the corresponding waiting time penalties that were  
8 paid. DEFENDANT perpetrated this unlawful, unfair and deceptive practice to the  
9 detriment of the AGGRIEVED EMPLOYEES. DEFENDANT's uniform practice and  
10 policy of failing to pay the AGGRIEVED EMPLOYEES for all vested vacation and holiday  
11 time accumulated at employment termination violated and continues to violate Section 227.3  
12 of the California Labor Code.

13 31. All of the conduct and violations alleged herein occurred during the PAGA  
14 PERIOD. To the extent that any of the conduct and violations alleged herein did not affect  
15 PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those violations  
16 that affected the AGGRIEVED EMPLOYEES pursuant to *Carrington v. Starbucks Corp.*  
17 2018 AJDAR 12157 (Certified for Publication 12/19/18).

### 18 19 **JURISDICTION AND VENUE**

20 32. This Court has jurisdiction over this Action pursuant to California Code of  
21 Civil Procedure, Section 410.10.

22 33. Venue is proper in this Court pursuant to California Code of Civil Procedure,  
23 Sections 395.5 and 393, because DEFENDANT operates in locations across California,  
24 employs AGGRIEVED EMPLOYEES across California, including in this County, and  
25 committed the wrongful conduct herein alleged in this County against AGGRIEVED  
26 EMPLOYEES and DEFENDANT currently maintains and at all relevant times maintained  
27 offices and facilities in this County and/or conducts substantial business in this County.  
28

1 **FIRST CAUSE OF ACTION**

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

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

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

5 34. PLAINTIFF realleges and incorporates by this reference, as though fully set  
6 forth herein, the prior paragraphs of this Complaint.

7 35. PAGA is a mechanism by which the State of California itself can enforce state  
8 labor laws through the employee suing under the PAGA who do so as the proxy or agent of  
9 the state's labor law enforcement agencies. An action to recover civil penalties under  
10 PAGA is fundamentally a law enforcement action designed to protect the public and not to  
11 benefit private parties. The purpose of the PAGA is not to recover damages or restitution,  
12 but to create a means of "deputizing" citizens as private attorneys general to enforce the  
13 Labor Code. In enacting PAGA, the California Legislature specified that "it was ... in the  
14 public interest to allow aggrieved employees, acting as private attorneys general to recover  
15 civil penalties for Labor Code violations ..." Stats. 2003, ch. 906, § 1. Accordingly, PAGA  
16 claims cannot be subject to arbitration.

17 36. PLAINTIFF, and such persons that may be added from time to time who  
18 satisfy the requirements and exhaust the administrative procedures under the Private  
19 Attorney General Act, brings this Representative Action on behalf of the State of California  
20 with respect to himself and all individuals who are or previously were employed by  
21 DEFENDANT in California, including any employees staffed with DEFENDANT by a third  
22 party, and classified as non-exempt employees ("AGGRIEVED EMPLOYEES") during the  
23 time period of January 3, 2022 until a date as determined by the Court (the "PAGA  
24 PERIOD").

25 37. On January 3, 2023, PLAINTIFF gave written notice by electronic mail to the  
26 Labor and Workforce Development Agency (the "Agency") and by certified mail to the  
27 employer of the specific provisions of this code alleged to have been violated as required by  
28 Labor Code § 2699.3. See **Exhibit #1**, attached hereto and incorporated by this reference

1 herein (*PAGA Notice only without draft complaint*). The statutory waiting period for  
2 PLAINTIFF to add these allegations to the Complaint has expired. As a result, pursuant to  
3 Section 2699.3, PLAINTIFF may now commence a representative civil action under PAGA  
4 pursuant to Section 2699 as the proxy of the State of California with respect to all  
5 AGGRIEVED EMPLOYEES as herein defined.

6 38. The policies, acts and practices heretofore described were and are an unlawful  
7 business act or practice because DEFENDANT (a) failed to provide PLAINTIFF and the  
8 AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to properly  
9 record and provide legally required meal and rest periods, (c) failed to pay minimum wages,  
10 (d) failed to pay overtime wages and sick pay wages, (e) failed to reimburse employees for  
11 required expenses, and (f) failed to provide suitable seating, all in violation of the applicable  
12 Labor Code sections listed in Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 218, 221,  
13 226(a), 226.7, 227.3, 246 *et seq.*, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802,  
14 California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California  
15 Code of Regulations, Title 8, Section 11070(14) (Failure to Provide Seating), and the  
16 applicable Wage Order(s), and thereby gives rise to civil penalties as a result of such  
17 conduct.<sup>1</sup> PLAINTIFF hereby seeks recovery of only civil penalties as prescribed by the  
18 Labor Code Private Attorney General Act of 2004 as the representative of the State of  
19 California for the illegal conduct perpetrated on PLAINTIFF and the AGGRIEVED  
20 EMPLOYEES.

21  
22 **PRAYER FOR RELIEF**

23 WHEREFORE, PLAINTIFF prays for judgment against each Defendant, jointly and  
24 severally, as follows:

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

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

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

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

7           Dated: March 24, 2023       BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW  
8                                           LLP

9  
10                                           By:    /s/ Nicholas De Blouw  
11                                                 \_\_\_\_\_  
12                                                 Norman B. Blumenthal  
13                                                 Kyle R. Nordrehaug  
14                                                 Nicholas J. De Blouw

15                                                 **GOMEZ TRIAL ATTORNEYS, APLC**  
16                                                 John Gomez (State Bar #171485)  
17                                                 Emilia Arutunian (State Bar #305824)

18                                                 *Attorneys for Plaintiff*  
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# **EXHIBIT 1**

# **BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP**

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WRITERS EXT:

1004

January 3, 2023

CA 2842

## **VIA ONLINE FILING TO LWDA AND CERTIFIED MAIL TO DEFENDANT**

Labor and Workforce Development Agency  
Online Filing

Beshay Foods, Inc.  
Certified Mail #70222410000247761847  
COGENCY GLOBAL INC.  
122 E. 42ND ST 18TH FL  
NEW YORK, NY 10168

Re: Notice Of Violations Of California Labor Code Sections §§ 201, 202, 203, 204 et seq., 210, 218, 221, 226(a), 226.7, 227.3, 246 et seq., 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 1 1070(14) (Failure to Provide Seating), Violation of Applicable Industrial Welfare Commission Wage Order(s), and Pursuant To California Labor Code Section 2699.5.

Dear Sir/Madam:

“Aggrieved Employees” refers to all individuals who are or previously were employed by Beshay Foods, Inc. in California, including any employees staffed with Beshay Foods, Inc. by a third party, and classified as non-exempt employees during the time period of January 3, 2022 until a date as determined by the Court. Our offices represent Plaintiff Victor Barcenas (“Plaintiff”) and other Aggrieved Employees in a lawsuit against Beshay Foods, Inc. (“Defendant”). Plaintiff has been employed by Defendant in California since May of 2022 and at all times has been classified by Defendant as a non-exempt employee, paid on an hourly basis, and entitled to the legally required meal and rest periods and payment of minimum and overtime wages due for all time worked. Defendant, however, unlawfully failed to record and pay Plaintiff and other Aggrieved Employees for, including but not limited to, all of their time worked, including minimum and overtime wages and sick pay wages at the correct rate, for all of their missed meal and rest breaks at the correct regular rates, and for all of their time spent working off the clock. Moreover, when Defendant required Plaintiff and Aggrieved Employees to report for work, but “furnished less than half said employee’s usual or scheduled day’s work,” Defendant violated Cal. Code Regs., tit. 8 § 11040, subd. 5(A) by failing to pay Plaintiff and Aggrieved Employees for at least two (2) hours’ worth of work at their regular rate of pay. In addition, when Defendant required Plaintiff and Aggrieved Employees to respond to and engage in additional work, this resulted in a second reporting for work in a single workday, and Defendant failed to pay these employees reporting time pay as required by Cal. Code Regs., tit. 8, § 11040, subd. 5(B). Further, Defendant failed to advise Plaintiff and the other Aggrieved Employees of their right to take separately and hourly paid duty-free ten (10) minute rest periods.

*See Vaquero v. Stoneledge Furniture, LLC*, 9 Cal. App. 5<sup>th</sup> 98, 110 (2017). Additionally, pursuant to Labor Code § 204 *et seq.*, Defendant failed to timely provide Plaintiff and other Aggrieved Employees with their wages. Plaintiff further contends that Defendant failed to provide accurate wage statements to her, and other Aggrieved Employees, in violation of California Labor Code section 226(a). Specifically, PLAINTIFF and the AGGRIEVED EMPLOYEES were paid on an hourly basis. As such, the wage statements should reflect all applicable hourly rates during the pay period and the total hours worked, and the applicable pay period in which the wages were earned pursuant to California Labor Code Section 226(a). The wage statements Defendant provided to PLAINTIFF and the AGGRIEVED EMPLOYEES failed to identify such information. More specifically, the wage statements failed to identify the accurate total hours worked each pay period in violation of Cal. Lab. Code Section 226(a)(2). Additionally, Plaintiff contends that Defendant failed to comply with Industrial Wage Order 7(A)(3) in that Defendant failed to keep time records showing when Plaintiff began and ended each shift and meal period. Plaintiff and other Aggrieved Employees perform tasks that reasonably permit sitting, and a seat would not interfere with their performance of any of their tasks that may require them to stand. Defendant failed to provide Plaintiff and other Aggrieved Employees with suitable seats. Said conduct, in addition to the foregoing, as well as the conduct alleged in the incorporated Complaint, violates Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 218, 221, 226(a), 226.7, 227.3, 246, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 1 1070(14) (Failure to Provide Seating), Violation of the applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code section 2699.3.

A true and correct copy of the Complaint by Plaintiff against Defendant, which (i) identifies the alleged violations, (ii) details the facts and theories which support the alleged violations, (iii) details the specific work performed by Plaintiff, (iii) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to Plaintiff, and (iv) sets forth the illegal practices used by Defendant, is attached hereto. This information provides notice to the Labor and Workforce Development Agency of the facts and theories supporting the alleged violations for the agency's reference. Plaintiff therefore incorporates the allegations of the attached Complaint into this letter as if fully set forth herein. If the agency needs any further information, please do not hesitate to ask.

This notice is provided to enable Plaintiff to proceed with the Complaint against Defendant as authorized by California Labor Code section 2699, *et seq.* The lawsuit consists of other Aggrieved Employees. As counsel, our intention is to vigorously prosecute the claims as alleged in the Complaint, and to procure civil penalties as provided by the Private Attorney General Statue of 2004 on behalf of Plaintiff and all Aggrieved Employees.

Your earliest response to this notice is appreciated. If you have any questions or concerns, please do not hesitate to contact me at the above number and address.

Respectfully,

/s/ Nicholas J. De Blouw

Nicholas J. De Blouw, Esq.