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County of Alameda

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ALAMEDA

CARISSA MEJIA, on behalf of the State of
California, as a private attorney general,

Plaintiff,

v.

CHALLENGE DAIRY PRODUCTS, INC., a
California Corporation; and DOES 1-50,
inclusive.

Defendants.

CASE NO.: **23CV031233**

**REPRESENTATIVE ACTION
COMPLAINT:**

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

DEMAND FOR JURY TRIAL

1 Plaintiff Carissa Mejia (“Plaintiff”) on behalf of the State of California hereby brings this
2 PAGA Representative Action Complaint (“Complaint”) against Defendant Challenge Dairy
3 Products, Inc. (“Defendant”) and DOES 1 to 50 (collectively, “Defendants”) and each of them, as
4 follows:

5 **INTRODUCTION**

6 1. Defendant Challenge Dairy Products, Inc., is a cooperative association responsible for
7 the marketing and distribution of dairy products produced from 450 large family-owned dairies.

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

10 3. As set forth below, Plaintiff alleges that Defendants pay policies/procedures failed to
11 pay Plaintiff and other aggrieved employees at the appropriate legal rate for all overtime hours
12 worked. Plaintiff further alleges that Defendants failed to pay all sick days at the legal “regular rate
13 of pay,” and pay all vacation at the correct final rate.

14 4. Moreover, Plaintiff alleges that aggrieved employees were not always allowed and
15 permitted to take all legally complaint meal and rest periods and were not paid premium pay at the
16 “regular rate of pay” for non-complaint meal or rest periods. Plaintiff further alleges that Defendants
17 uniformly failed to reimburse aggrieved employees for necessary business expenditures.

18 5. Finally, Plaintiff alleges that Defendants failed to provide aggrieved employees with
19 accurate written itemized wage statements and failed to timely pay all final wages upon separation of
20 employment.

21 **JURISDICTION**

22 6. This is a representative action brought pursuant to Labor Code § 2698 *et seq.* on
23 behalf of the State of California and the group of aggrieved employees defined as follows: “All
24 individuals who are or were employed as hourly, non-exempt, employees by Defendants, or their
25 predecessors or merged entities, in the State of California from February 10, 2022, and continuing to
26 the present (“aggrieved employees).”

27 7. Plaintiff, of behalf of the State of California brings this representative action pursuant
28 to Labor Code § 2698, *et seq.* seeking penalties for Defendants’ violation of California Labor Code

1 §§ 201-204, 210, 221, 226(a), 226(e), 226.3, 226.7, 227.3, 246, 510, 512, 516, 1197.1, 1194, 1199,
2 2802-2804, and all applicable IWC Wage Orders.

3 8. Based upon the foregoing, Plaintiff and all aggrieved employees are aggrieved
4 employees within the meaning of Labor Code §2699, *et seq.*

5 9. This Court has jurisdiction over Defendants because, upon information and belief,
6 Defendants have sufficient minimum contacts in California, or otherwise intentionally avail
7 themselves to the State of California so as to render the exercise of jurisdiction over them by
8 California courts consistent with the traditional notions of fair play and substantial justice.

9 **VENUE**

10 4. Venue is proper in this judicial district pursuant to California Code of Civil Procedure
11 §§ 395(a) and 395.5, as most of the acts and omissions complained of herein occurred in the County
12 of Alameda. Defendants own, maintain offices, transact business, have an agent or agents within the
13 County of Alameda, and/or otherwise are found within the County of Alameda, and Defendants are
14 within the jurisdiction of this Court for purposes of service of process.

15 **PARTIES**

16 10. At all relevant times herein, Plaintiff, who is over the age of 18, was and currently is a
17 California resident residing in the State of California.

18 11. Plaintiff is informed and believes and thereon alleges that Defendant Challenge Dairy
19 Products, Inc., is a California corporation authorized to and doing business in California and is and/or
20 was the legal employer of Plaintiff and the aggrieved employees during the applicable statutory
21 periods. Plaintiff was, and is, a victim of Defendants' policies and/or practices complained of herein
22 and has been deprived of the rights guaranteed to her by California Labor Code §§ 201-204, 210,
23 221, 226(a), 226(e), 226.3, 226.7, 227.3, 246, 510, 512, 516, 1194, 1194.2, 1197.1, 1199, 2802-2804,
24 and applicable Wage Orders.

25 12. Plaintiff is informed and believes, and based thereon alleges, that at all relevant times
26 preceding the filing of the Complaint and continuing to the present, Defendants did (and continue to
27 do) business in the State of California, County of Alameda.

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1 13. Plaintiff does not know the true names or capacities, whether individual, partner, or
2 corporate, of the defendants sued herein as DOES 1 to 50, inclusive, and for that reason, said
3 Defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to
4 amend this Complaint when such true names and capacities are discovered. Plaintiff is informed, and
5 believes, and thereon alleges, that each of said fictitious defendants, whether individual, partners, or
6 corporate, were responsible in some manner for the acts and omissions alleged herein, and
7 proximately caused Plaintiff and the aggrieved employees to be subject to the unlawful employment
8 practices alleged herein.

9 14. Plaintiff is informed, and believes, and thereon alleges, that at all times mentioned
10 herein, Defendants were and are the employers of Plaintiff and the aggrieved employees. At all times
11 herein mentioned, each of said Defendants participated in the doing of the acts hereinafter alleged to
12 have been done by the named Defendants; and furthermore, the Defendants, and each of them, were
13 the agents, servants, and employees of each and every one of the other Defendants, as well as the
14 agents of all Defendants, and at all times herein mentioned were acting within the course and scope
15 of said agency and employment. Defendants, and each of them, approved of, condoned, and/or
16 otherwise ratified each and every one of the acts or omissions complained of herein.

17 15. At all times mentioned herein, Defendants, and each of them, were members of and
18 engaged in a joint venture, partnership, and common enterprise, and acting within the course and
19 scope of and in pursuance of said joint venture, partnership, and common enterprise. Further, Plaintiff
20 alleges that all Defendants were joint employers for all purposes of Plaintiff and the aggrieved
21 employees.

22 **PAGA REPRESENTATIVE ACTION ALLEGATIONS**

23 16. Defendants are a cooperative association responsible for the marketing and
24 distribution of dairy products produced from 450 large family-owned dairies across the State of
25 California with locations in San Leandro, Los Angeles, Lodi, Ventura, Fresno, Santa Maria,
26 Monterey, and San Diego.

27 17. Plaintiff was employed by Defendants as a non-exempt employee with the title of
28 “Retail Specialist/Operations Coordinator.”

1 18. Plaintiff and other aggrieved employees (including, but not limited to, drivers, retail
2 specialists, customer service representatives, and all other non-exempt positions) were responsible
3 for all aspects of Defendants’ services across the State of California. At all relevant times, Plaintiff
4 and the other aggrieved employees were subjected to the same policies, procedures, and practices,
5 working conditions, and corresponding wage and hour violations.

6 19. First, at all relevant times, Plaintiff and other aggrieved employees were not properly
7 paid at the correct overtime rate for all hours worked in excess of eight (8.0) hours per workday or
8 forty (40.0) hours per workweek. When Plaintiff and the other aggrieved employees worked overtime
9 hours, Defendants failed to include all compensation, including but not limited to, non-discretionary
10 bonuses, commissions, shift differentials, and other forms of remuneration, when calculating the
11 “regular rate of pay” used in overtime calculations.

12 20. Under the California Labor Code (as well as the FLSA), courts have consistently held
13 that regularly paid non-discretionary bonuses (and other forms of pay) must be included in
14 determining an employee’s “regular rate of pay” for purposes of calculating overtime. (See *Haber v.*
15 *The Americana Corp.* 378 F. 2d 854, 855-856 (9th Cir. 1967) [holding that regularly paid efficiency
16 bonuses must be included in calculating the “regular rate”]; *Wang v. Chinese Daily News, Inc.* 435 F.
17 Supp. 2d 1042, 1055-1057 (C.D. Cal. 2006) [granting summary judgement to Plaintiff under
18 California and federal law on the grounds, that Defendant improperly calculated overtime by
19 excluding annual bonuses paid to employees from the “regular rate of compensation”].)

20 21. Pursuant to Section 3 of the applicable Wage Orders, employees shall not be employed
21 more than eight (8) hours in any workday or more than 40 hours in any workweek unless the employee
22 receives one and one-half (1 1/2) times such employee’s regular rate of pay for all hours worked over
23 40 hours in the workweek. By their policy of requiring Plaintiff and the other non-exempt employees
24 to work in excess of eight (8) hours in a workday and/or forty (40) hours in a workweek without
25 compensating them at the rate of one-half (1 1/2) their regular rate of pay, Goodman willfully violated
26 the provisions of Labor Code § 510 and applicable Wage Orders.

27 22. As a result of Defendants’ failure to include all forms of compensation in calculating
28 the “regular rate,” as set forth above, Defendants failed to compensate Plaintiff and other aggrieved

1 employees for all overtime wages at their legal rates.

2 23. Accordingly, Plaintiff and other aggrieved employees are entitled to recover liquidated
3 damages for violations of Labor Code § 1197.1. Plaintiff and other aggrieved employees would be
4 entitled to recover penalties under Labor Code § 2698 *et seq.*

5 24. Similarly, at all relevant times, Defendants also failed in its obligation to provide
6 Plaintiff and other aggrieved employees the legally required paid sick days at the legal rate pursuant
7 to Labor Code §§ 246(a),(b), which requires that “[a]n employee who, on or after July 1, 2015, works
8 in California for the same employer for 30 or more days within a year from the commencement of
9 employment is entitled to paid sick days. . . at the rate of not less than one hour per every 30 hours
10 worked, beginning at the commencement of employment.” Labor Code § 246(l)(1) provides that paid
11 sick time for non-exempt employees must be “calculated in the same manner as the regular rate of
12 pay for the workweek in which the employee uses paid sick time, whether or not the employee
13 actually works overtime in that workweek.”

14 25. Additionally, Labor Code § 246(l)(2) states that the paid sick time must be “calculated
15 by dividing the employee’s total wages, not including overtime premium pay, by the employee’s total
16 hours worked in the full pay periods of the prior 90 days of employment.” Finally, Labor Code §246(i)
17 requires employers to “provide an employee with written notice that sets forth the amount of paid
18 sick leave available, or paid time off leave an employer provides in lieu of sick leave, for use on either
19 the employee’s itemized wage statement described in Section 226 or in a separate writing provided
20 on the designated pay date with the employee’s payment of wages.”

21 26. Here, at all relevant times, Defendants failed in its obligation to provide Plaintiff and
22 other aggrieved employees the legally required paid sick days at the legal rate, including all forms of
23 compensation, pursuant to Labor Code §§ 246(a),(b).

24 27. As such, Defendants paid sick time below her base rate of pay, rather than the “regular
25 rate of pay” as required by Labor Code §§ 246(l)(1-2). Based on the foregoing Labor Code violations,
26 Plaintiff seeks all civil and statutory penalties available and applicable under Labor Code §
27 2699(f)(2), and for attorneys’ fees and costs pursuant to Labor Code § 2699(g)(1).

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1 28. Moreover, at all relevant times, Plaintiff and other aggrieved employees were denied
2 30-minute off-duty meal periods prior to the fifth hour of work as mandated by California law. As a
3 result of Defendants’ meal period policies/practices and work demands, Plaintiff and other aggrieved
4 employees were often unable to take all their legally compliant and timely meal periods.

5 29. Further, for shifts longer than 10.0 hours, Plaintiff and other aggrieved employees
6 were often unable to take compliant and timely second meal periods before the tenth hour of work.
7 Moreover, meal breaks were often interrupted by operational requirements and work demands
8 mandated by Defendants.

9 30. Making matters worse, Defendants required Plaintiff and other aggrieved employees
10 to clock in as if complaint meal periods were provided, when they were not actually provided.

11 31. Finally, at all relevant times, Plaintiff and other aggrieved employees were not
12 provided with meal period premiums at the “regular rate of pay” for their missed or non-compliant
13 meal periods as required by Labor Code § 226.7 and *Ferra v. Loews Hollywood Hotel, LLC* (2021)
14 11 5th 858.

15 32. Consequently, Defendants have violated Labor Code §§ 226.7, 512 and applicable
16 Wage Orders and thus liable for civil penalties pursuant to Labor Code § 2698.

17 33. Furthermore, at all relevant times, Plaintiff and other aggrieved employees were also
18 not provided with 10 minutes of net rest period time for every 4 hours worked, or major fraction
19 thereof as mandated by California law. Specifically, due to Defendants’ rest period policies/practices
20 and work demands at Defendants, Plaintiff and other aggrieved employees were often unable to take
21 compliant uninterrupted rest periods of 10 net minutes time for every 4 hours worked, or major
22 fraction thereof. On occasions when Plaintiff and other aggrieved employees worked more than 10.0
23 hours in a shift, Defendants failed to authorize and/or permit a third mandated 10-minute rest period.

24 34. By not relieving all aggrieved employees of all duties during rest periods, Defendants
25 failed to provide legally compliant rest periods. See *Augustus v. ABM Security Services, Inc.* (2016)
26 2 Cal. 5th 257, 269 [concluding that “during rest periods employers must relieve employees of all
27 duties and relinquish control over how employees spend their time.”]. In *Augustus*, the California
28 Supreme Court expressly rejected the employers’ assertion that it could provide an on-duty rest period

1 to employees who worked as security guards and further explained “that employers [must] relinquish
2 any control over how employees spend their break time and relieve their employees of all duties.” *Id.*
3 at 273.

4 35. Each time the aggrieved employees were unable to take a compliant rest period,
5 Defendants failed and continues to fail to adequately pay rest period premium payments at the
6 “regular rate of pay” as required by Labor Code § 226.7.

7 36. Accordingly, due to Defendants’ uniform rest period policies/practices, Plaintiff and
8 other aggrieved employees were regularly denied legally compliant rest periods in violation of Labor
9 Code 226.7, 512, and applicable Wage Orders.

10 37. As a result of Defendants’ unlawful rest period policies and practices, Plaintiff seeks
11 to recover on behalf of herself and all aggrieved employees rest period premiums and penalties.
12 Consequently, Defendants has violated Labor Code §§ 226.7, 512 and applicable Wage Orders.
13 Defendants would also be liable for civil penalties pursuant to Labor Code § 2698 *et seq.*

14 38. As a result of Defendants’ failure to pay Plaintiff and other aggrieved employees for
15 all overtime and sick pay wages at the proper “regular rate of pay,” and failure to pay for meal and
16 rest period premiums at the “regular rate of pay” for missed/non-compliant meal/rest periods,
17 Defendants issued wage statements which failed to accurately identify the gross wages earned, the
18 total hours worked, the net wages earned, and the correct corresponding number of hours worked at
19 each hourly rate, in violation of Labor Code §226(a)(1, 2, 5, and 9).

20 39. Labor Code § 226.3 provides that “[a]ny employer who violates subdivision (a) of
21 Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per
22 employee per violation in an initial violation and one thousand dollars (\$1,000) per employee for
23 each violation in a subsequent citation, for which the employer fails to provide the employee a wage
24 deduction statement or fails to keep the required in subdivision (a) of Section 226.”

25 40. Thus, for the violations of Labor Code section 226 described above, Plaintiff and other
26 aggrieved employees may also recover Labor Code § 226.3 penalties for Defendants’ violations of
27 Labor Code § 226(a). As such, the wage statements Defendants issued to Plaintiff and other aggrieved
28 employees are in violation of Labor Code § 226 (a)(9). Thus, Plaintiff is an aggrieved employee

1 within the meaning of PAGA and Defendants has violated Labor Code §226(a) with respect to
2 Plaintiff and other aggrieved employees. Consequently, because Defendants failed to comply with
3 Labor Code § 226(a) and applicable Wage Orders, Plaintiff and other aggrieved employees would be
4 entitled to recover civil penalties under Labor Code §§ 226.3 and/or 2698 *et seq.*

5 41. Furthermore, at all relevant times, Defendants required Plaintiff and other aggrieved
6 employees to incur necessary business expenses including, but not limited to, the costs associated
7 with using their personal cell phones and other expenses associated with working from home for work
8 purposes. However, at all relevant times, Defendants failed to reimburse aggrieved employees
9 adequately for these necessary expenditures in violation of Labor Code §§ 2802-2804. (*See Cochran*
10 *v. Schwan's Home Service, Inc.*, (2014) 228 Cal.App.4th 1137, 1144 ["[i]f an employee is required
11 to make work-related calls on a personal cell phone, then he or she is incurring an expense for the
12 purposes of section 2802...To show liability under section 2802, an employee need only show that he
13 or she was required to use a personal cell phone to make work-related calls, and he or she was not
14 reimbursed"].)

15 42. Accordingly, due to Defendants' uniform failure to adequately reimburse for
16 necessary business expenditures in violation of Labor Code §§ 2802-2804 and applicable Wage
17 Orders, Plaintiff and other aggrieved employees would be entitled to civil penalties pursuant to Labor
18 Code § 2698 *et seq.*

19 43. Finally, because of, Defendants' failure to pay all overtime and sick pay wages, and
20 meal and rest period premiums at the "regular rate of pay," Defendants also failed and continues to
21 fail to pay other aggrieved employees all wages owed at their time of separation from employment
22 in violation of Labor Code §§ 201-203 and applicable Wage Orders. Thus, aggrieved employees
23 would be entitled to recover penalties under Labor Code § 2698 *et seq.*

24 **FIRST CAUSE OF ACTION**

25 **PRIVATE ATTORNEYS GENERAL ACT**

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

27 44. Plaintiff re-alleges and incorporates by reference each and every allegation set forth
28 in the preceding paragraphs.

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

9 (a) Defendants’ failure to pay the correct hourly rate for all overtime hours worked;

10 (b) Defendants’ failure to pay all overtime wages at the “regular rate of pay” because
11 Defendants failed to include all forms of compensation, including, but not limited to, shift
12 differentials, non-discretionary bonuses, incentive pay, and other forms of remuneration;

13 (c) Defendants’ failure to pay all wages in a timely fashion in violation of Labor Code §
14 204;

15 (d) Defendants’ failure to pay all sick pay at the “regular rate of pay”;

16 (e) Defendants’ failure to pay all vacation wages at the correct final rate;

17 (f) Defendants’ failure to allow and permit legally compliant meal periods or compensation
18 at the “regular rate of pay” in lieu thereof;

19 (g) Defendants’ failure to allow and permit legally compliant rest periods or compensation
20 at the “regular rate of pay” in lieu thereof;

21 (h) Defendants’ failure to furnish legally compliant wage statements pursuant to Labor
22 Code § 226(a);

23 (i) Defendants’ failure to reimburse all necessary business expenditures in violation of
24 Labor Code §§ 2802-2804; and

25 (j) Defendants’ failure to timely pay final wages to aggrieved employees at the time of
26 separation from employment were unlawful.

27 46. On or about February 10, 2023, Plaintiff notified Defendant Challenge Dairy Products,
28 Inc. (“Defendant”) via certified mail, and the California Labor and Workforce Development Agency

1 (“LWDA”) via its website of Defendant’s violations of the California Labor Code § 2698 *et. seq.*
2 with respect to violations of the California Labor Code identified in Paragraph 45(a)-(j). Now that
3 sixty-five days (65) have passed from Plaintiff notifying Defendant of these violations, Plaintiff has
4 exhausted her administrative requirements for bringing a claim under the Private Attorneys General
5 Act with respect to these violations.

6 47. Plaintiff was compelled to retain the services of counsel to file this court action to protect
7 her interests and the interests of other similarly aggrieved employees, and to assess and collect the
8 civil penalties owed by Defendants. Plaintiff has therefore incurred attorneys’ fees and costs, which
9 he is entitled to receive under California Labor Code § 2698 *et seq.*

10 **PRAYER FOR RELIEF**

11 **WHEREFORE**, Plaintiff prays for judgment on behalf of the State of California against
12 Defendants, as follows:

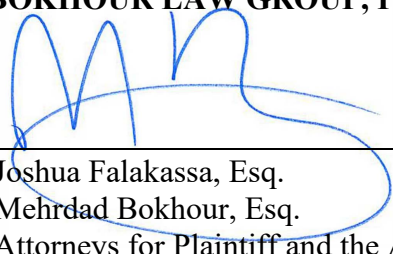
13 1. Upon the First Cause of Action, for civil penalties due to Plaintiff, other similarly
14 aggrieved employees, and the State of California according to proof pursuant to Labor Code § 2699
15 (a) and (f) including, but not limited to: (1) \$100 for each initial violation and \$200 for each
16 subsequent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

18 2. For attorneys’ fees and costs as provided by Labor Code § 2698 *et seq.*, and Code
19 of Civil Procedure §1021.5; and

20 3. For such other and further relief, the Court may deem just and proper.

21
22 Dated: April 14, 2023

FALAKSSA LAW, P.C.
BOKHOUR LAW GROUP, P.C.

23
24
25 By: 

26 Joshua Falakassa, Esq.
27 Mehrdad Bokhour, Esq.
28 Attorneys for Plaintiff and the Aggrieved Employees