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Superior Court of California,
County of Alameda

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Attorneys for Plaintiff TRISTAN AUSTIN,
on behalf of himself and current and former aggrieved employees

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA**

TRISTAN AUSTIN, on behalf of himself and
current and former aggrieved employees

Plaintiff,

vs.

FLOWERS BAKERIES SALES OF SOCAL,
LLC; and DOES 1 to 100, inclusive,

Defendants.

Case No.: **25CV180607**

PAGA ACTION

**COMPLAINT FOR CIVIL
PENALTIES PURSUANT TO THE
PRIVATE ATTORNEYS GENERAL
ACT OF 2004 ("PAGA"), LABOR
CODE SECTIONS 2698, ET SEQ.**

COMES NOW Plaintiff TRISTAN AUSTIN ("Plaintiff"), who alleges and complains
against Defendants FLOWERS BAKERIES SALES OF SOCAL, LLC; and DOES 1 to 100,
inclusive (collectively "Defendants") as follows:

I. INTRODUCTION

1. This is a Private Attorneys General Act of 2004, Labor Code §§ 2698, *et seq.*
("PAGA") representative action brought by Plaintiff on behalf of the State of California, himself
and other current and former aggrieved employees of Defendants who worked as hourly non-exempt
employees in California during the relevant time period seeking civil penalties associated with
Defendants' violation of the Labor Code based on Defendants' failure to pay wages for all hours

1 worked at minimum wage and all overtime hours worked at the overtime rate of pay; failure to pay
2 overtime wages at the proper overtime rate of pay; failure to pay wages for accrued paid sick time
3 at the regular rate of pay; statutory penalties for failure to timely pay earned wages during
4 employment; statutory penalties for failure to provide accurate wage statements; statutory waiting
5 time penalties in the form of continuation wages for failure to timely pay employees all wages due
6 upon separation of employment. . Plaintiff experienced these violations personally, as well as is
7 informed and believes other aggrieved employees did as well. Plaintiff seeks on a representative
8 basis, following notice to the Labor and Workforce Development Agency, civil penalties, reasonable
9 attorneys' fees pursuant to Labor Code section 2699(g)(1) and costs brought on behalf of Plaintiff,
10 the State of California, and others aggrieved.

11 **II. JURISDICTION AND VENUE**

12 2. This Court has jurisdiction over the claims of Plaintiff and all other current and
13 former aggrieved California-based hourly non-exempt employees because Plaintiff's lawsuit seeks
14 civil penalties on behalf of herself, all other current and former aggrieved California-based hourly
15 non-exempt employees, and the State of California in excess of thirty-five thousand dollars
16 (\$35,000); Defendants employed Plaintiff and all other current and former aggrieved California-
17 based hourly non-exempt employees; and the injuries to all other current and former aggrieved
18 California-based hourly non-exempt employees occurred in locations throughout California,
19 including but not limited to Alameda County, at San Leandro, CA 94577.

20 **III. PARTIES**

21 3. Plaintiff brings this action as a representative of the Labor and Workforce
22 Development Agency on behalf of himself and other current and former employees subject to
23 violations of the Labor Code. The named Plaintiff and the persons on whose behalf this action is
24 filed include current, former and/or future employees of Defendants who work, worked, or will work
25 for Defendants as direct employees as well as temporary employees employed through temp
26 agencies as hourly non-exempt employees in California. At all times mentioned herein, the currently
27 named Plaintiff is and was domiciled and a resident and citizen of California and was employed by
28 Defendants in an hourly position from in or around February 2025, until on or about May 8, 2025.

1 4. Plaintiff is informed and believes and thereon alleges that Defendant FLOWERS
2 BAKERIES SALES OF SOCAL, LLC is authorized to do business within the State of California
3 and is doing business in the State of California and/or that Defendants DOES 1-50 are, and at all
4 times relevant hereto were persons acting on behalf of Defendant FLOWERS BAKERIES SALES
5 OF SOCAL, LLC in the establishment of, or ratification of, the aforementioned illegal wage and
6 hour practices or policies. Defendant FLOWERS BAKERIES SALES OF SOCAL, LLC operates
7 in Alameda County and employed aggrieved employees in Alameda County, including but not
8 limited to, at San Leandro, CA 94577.

9 5. Plaintiff is informed and believes and thereon alleges that Defendants DOES 1
10 through 50 are corporations, or are other business entities or organizations of a nature unknown to
11 Plaintiff that employed Plaintiff and aggrieved California non-exempt employees, permitted
12 Plaintiff and aggrieved employees to work, and exercised control over the wages, hours and working
13 conditions of employment of Plaintiff and aggrieved employees.

14 6. Plaintiff is informed and believes and thereon alleges that Defendants DOES 51
15 through 100 are individuals unknown to Plaintiff. Each of the individual defendants is sued
16 individually and in his or her capacity as an agent, shareholder, owner, representative, manager,
17 supervisor, independent contractor and/or employee of each defendant who violated or caused to be
18 violated the minimum wage and overtime provisions of the Labor Code and/or any provision of the
19 Industrial Welfare Commission's wage orders regulating hours and days of work.

20 7. Plaintiff is unaware of the true names of Defendants DOES 1 through 100. Plaintiff
21 sues said defendants by said fictitious names, and will amend this complaint when the true names
22 and capacities are ascertained or when such facts pertaining to liability are ascertained, or as
23 permitted by law or by the Court. Plaintiff is informed and believes that each of the fictitiously
24 named defendants is in some manner responsible for the events and allegations set forth in this
25 complaint.

26 8. Plaintiff makes the allegations in this complaint without any admission that, as to
27 any particular allegation, Plaintiff bears the burden of pleading, proving, or persuading and Plaintiff
28 reserves all of Plaintiff's right to plead in the alternative.

1 **FIRST CAUSE OF ACTION**

2 **CIVIL PENALTIES PURSUANT TO THE PRIVATE ATTORNEYS GENERAL ACT OF**
3 **2004, LABOR CODE SECTIONS 2698, ET SEQ.**

4 **(Against all Defendants by Plaintiff on behalf of Themselves, the State of California, and**
5 **Other Current and Former Aggrieved Employees)**

6 9. Plaintiff incorporates all paragraphs above as though fully set forth herein.

7 10. During Plaintiff's employment and continuing through the present, Plaintiff alleges
8 Defendants violated Labor Code sections 201, 202, 203, 204, 223, 226, 226.7, 227.3, 246, 510, 512,
9 1194, 1197, 1198, 2802, and the applicable Wage Orders.

10 11. Specifically, Defendants have committed the following violations of California
11 Labor Code:

12 12. **Failure to pay wages for all hours worked at the legal minimum wage:**
13 Defendants employed many of their employees, including Plaintiff, as hourly non-exempt
14 employees. In California, an employer is required to pay hourly employees for all "hours worked,"
15 which includes all time that an employee is under control of the employer and all time the employee
16 is suffered and permitted to work. This includes the time an employee spends, either directly or
17 indirectly, performing services which inure to the benefit of the employer.

18 13. Labor Code sections 1194 and 1197 require an employer to compensate employees
19 for all "hours worked" at least at a minimum wage rate of pay as established by the IWC and the
20 Wage Orders.

21 14. In this case, Plaintiff and other current and former aggrieved California-based hourly
22 non-exempt employees worked more minutes per shift than Defendants credited them with having
23 worked. Specifically, Defendants failed to pay Plaintiff and other current and former aggrieved
24 California-based hourly non-exempt employees all wages at the applicable minimum wage for all
25 hours worked due to Defendants' policies, practices, and/or procedures including, but not limited
26 to:

27 (a) Sometimes requiring Plaintiff and other current and former aggrieved California-
28 based hourly non-exempt employees to clock out for their meal breaks and continue to work

1 through their off-the-clock meal breaks in order to meet the demands and timelessness of their assigned
2 routes.

3 15. Therefore, Defendants suffered, permitted, and required Plaintiff and other current
4 and former aggrieved California-based hourly non-exempt employees to be subject to Defendants'
5 control without paying wages for that time. This resulted in Plaintiff and other current and former
6 aggrieved California-based hourly non-exempt employees working time for which they were not
7 compensated any wages, in violation of Labor Code sections 1194 and 1197 and the applicable
8 Wage Order.

9 16. Employee is further informed and believes, and based thereon alleges, that
10 Employer's conduct above that gave rise to such violations was malicious, fraudulent, or oppressive.
11 Employer would further be liable for civil penalties pursuant to Labor Code section
12 2699(f)(2)(B)(ii).

13 17. **Failure to pay wages for overtime hours worked at the overtime rate of pay**
14 **and/or failure to pay overtime wages at the proper rate of pay:** Defendants employed many of
15 their employees, including Plaintiff, as hourly non-exempt employees. In California, an employer
16 is required to pay hourly employees for all "hours worked," which includes all time that an employee
17 is under control of the employer and all time the employee is suffered and permitted to work. This
18 includes the time an employee spends, either directly or indirectly, performing services that inure to
19 the benefit of the employer.'

20 18. Labor Code sections 510 and 1194 require an employer to compensate employees a
21 higher rate of pay for hours worked in excess of eight (8) hours in a workday, in excess of forty (40)
22 hours in a workweek, and on any seventh consecutive day of work in a workweek:

23 Any work in excess of eight (8) hours in one workday, any work in excess of forty (40) hours
24 in any one (1) workweek, and the first eight (8) hours worked on the seventh day of work in
25 any one (1) workweek, shall be compensated at the rate of no less than one-and-one-half
26 (1.5) times the regular rate of pay for an employee. Any work in excess of twelve (12) hours
27 in one (1) day shall be compensated at the rate of no less than twice the regular rate of pay
28 for an employee. In addition, any work in excess of eight (8) hours on any seventh day of a
workweek shall be compensated at the rate of no less than twice the regular rate of pay of an
employee.

Labor Code section 510.

1 19. In this case, Defendants failed to pay Plaintiff and other current and former aggrieved
2 California-based hourly non-exempt employees overtime wages for all overtime hours worked due
3 to Defendants' policies, practices, and/or procedures including, but not limited to:

4 (a) Sometimes requiring Plaintiff and other current and former aggrieved California-
5 based hourly non-exempt employees to clock out for their meal breaks and continue to work through
6 their off-the-clock meal breaks in order to meet the demands and timelessness of their assigned routes.

7 20. Employee is further informed and believes, and based thereon alleges, that
8 Employer's conduct above that gave rise to such violations was malicious, fraudulent, or oppressive.
9 Employer would further be liable for civil penalties pursuant to Labor Code section
10 2699(f)(2)(B)(ii).

11 21. Furthermore, overtime is based upon an employee's regular rate of pay. "The regular
12 rate at which an employee is employed shall be deemed to include all remuneration for employment
13 paid to, or on behalf, of the employee." See Division of Labor Standards Enforcement –
14 Enforcement Policies and Interpretations Manual, Section 49.1.2.

15 22. In this case, Plaintiff alleges that when he and other current and former aggrieved
16 California-based hourly non-exempt employees earned overtime wages, Defendants failed to pay
17 them overtime wages at the proper overtime rate of pay due to Defendants' failure to include all
18 remuneration when calculating the overtime rate of pay. Specifically, Defendants maintained a
19 policy, practice, and/or procedure of failing to include all remuneration such as commission pay for
20 example, when calculating Plaintiff's and other current and former aggrieved California-based
21 hourly non-exempt employees' regular rate of pay for the purpose of paying overtime.

22 23. The foregoing policies, practices, and/or procedures resulted in time during each
23 workday that Plaintiff and other current and former aggrieved California-based hourly non-exempt
24 employees were under the control of Defendants but were not compensated. To the extent that the
25 foregoing uncompensated time occurred when Plaintiff and other current and former aggrieved
26 California-based hourly non-exempt employees worked more than eight (8) hours in a workday,
27 more than forty (40) hours in a workweek, and/or seven (7) days in a workweek, Defendants failed
28 to pay them at their overtime rate of pay for overtime hours worked, in violation of Labor Code

sections 510, 1194 and 1198, and the applicable Wage Order.

24. **Failure to provide sick pay wages:** Defendants had a policy and/or procedure where Plaintiff and other current and former aggrieved California-based hourly non-exempt employees accrued paid sick time.

25. Labor Code section 246, subdivision (a), states in relevant part “[a]n employee who...works in California for the same employer for 30 or more days within a year from the commencement of employment is entitled to paid sick days.” Additionally, an employee accrues paid sick days at the rate of no-less-than one (1) hour per every thirty (30) hours worked, beginning at the commencement of employment. Labor Code section 246(b).

26. Here, Plaintiff and other current and former aggrieved California-based hourly non-exempt employees were employed by Defendants for 30 or more days and were entitled to paid sick days. Defendants, however, lacked a policy, practice, and/or procedure whereby Plaintiffs and other current and former aggrieved California-based hourly non-exempt employees who were employed by Defendants for 30 days or more could accrue paid sick days at the rate of no-less-than one (1) hour per every thirty (30) hours worked, beginning at the commencement of employment as required by Labor Code section 246(b).

27. In this case, Plaintiff alleges that when he and other current and former aggrieved California-based hourly non-exempt employees elected to use paid sick time, Defendants failed to pay them sick time wages at the proper sick time rate of pay due to Defendants’ failure to include all remuneration when calculating the sick time rate of pay. Specifically, Defendants maintained a policy, practice, and/or procedure of failing to include all remuneration including but not limited to commission pay for example, when calculating Plaintiff and other current and former aggrieved California-based hourly non-exempt employees’ regular rate of pay for the purpose of paying sick time.

28. Defendants’ foregoing policy, practice, and/or procedure resulted in Defendants failing to provide Plaintiff and other current and former aggrieved California-based hourly non-exempt employees’ paid sick days, in violation of Labor Code section 246.

29. Plaintiff also believes these failures were malicious, fraudulent, or oppressive.

1 Employer would further be liable for civil penalties pursuant to Labor Code section
2 2699(f)(2)(B)(ii).

3 30. **Failure to timely pay earned wages during employment:** In California, wages
4 must be paid at least twice during each calendar month on days designated in advance by the
5 employer as regular paydays, subject to some exceptions. Labor Code section 204(a). Wages earned
6 between the 1st and 15th days, inclusive, of any calendar month must be paid between the 16th and
7 the 26th day of that month and wages earned between the 16th and the last day, inclusive, of any
8 calendar month must be paid between the 1st and 10th day of the following month. *Id.* Other payroll
9 periods such as those that are weekly, biweekly, or semimonthly, must be paid within seven (7)
10 calendar days following the close of the payroll period in which wages were earned. Labor Code
11 section 204(d).

12 31. As a derivative of Plaintiff's claims above, Plaintiff alleges that Defendants failed to
13 timely pay Plaintiff's and other current and former aggrieved California-based hourly non-exempt
14 employees' earned wages (including minimum wages, overtime wages, meal period premium wages
15 and/or rest period premium wages), in violation of Labor Code section 204. Defendants'
16 aforementioned policies, practices, and/or procedures resulted in their failure to pay Plaintiff's and
17 other current and former aggrieved California-based hourly non-exempt employees' their earned
18 wages within the applicable time frames outlined in Labor Code section 204.

19 32. Plaintiff also believes these failures were malicious, fraudulent, or oppressive.
20 Employer would further be liable for civil penalties pursuant to Labor Code section
21 2699(f)(2)(B)(ii).

22 33. **Secret payment of lower wages than designated by statute:** Labor Code section
23 223 provides that, where any statute or contract requires an employer to maintain the designated
24 wage scale, it shall be unlawful to secretly pay a lower wage while purporting to pay the wage
25 designated by statute or contract. By engaging in the unlawful conduct alleged herein, including by
26 failing to: pay overtime wages at the applicable legal overtime rate, meal break premiums and lawful
27 sick pay at the employees' regular rate of pay, as established by Labor Code sections 226.7, 246,
28 510, 1194 and sections 11 and 12 of the applicable IWC Wage Orders, as incorporated by Labor

1 Code section 1198, the Defendant secretly paid a lower wage than designated by statute while
2 purporting to pay the wages designated by statute, in violation of Labor Code section 223.

3 34. Plaintiff also believes these failures were malicious, fraudulent, or oppressive.
4 Employer would further be liable for civil penalties pursuant to Labor Code section
5 2699(f)(2)(B)(ii).

6 35. **Failure to provide complete and accurate wage statements:** Labor Code section
7 226, subdivision (a). Labor Code section 226(a) provides, *inter alia*, that, upon paying an employee
8 his or her wages, the employer must “furnish each of his or her employees ... an itemized statement
9 in writing showing (1) gross wages earned, (2) total hours worked by the employee, except for any
10 employee whose compensation is solely based on a salary and who is exempt from payment of
11 overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare
12 Commission, (3) the number of piece-rate units earned and any applicable piece rate if the employee
13 is paid on a piece-rate basis, (4) all deductions, provided, that all deductions made on written orders
14 of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive
15 dates of the pay period for which the employee is paid, (7) the name of the employee and his or her
16 social security number, (8) the name and address of the legal entity that is the employer, and (9) all
17 applicable hourly rates in effect during the pay period and the corresponding number of hours
18 worked at each hourly rate by the employee.”

19 36. As a derivative of Plaintiff’s allegations above, Defendants’ failure to pay Plaintiff
20 and other current and former aggrieved California-based hourly non-exempt employees all wages
21 earned (including minimum wages, overtime wages, meal period premium wages, and/or rest period
22 premium wages) rendered Plaintiff’s and other current and former aggrieved California-based
23 hourly non-exempt employees’ wage statements inaccurate, in violation of Labor Code section
24 226(a)(1, 2, 5 & 9).

25 37. Plaintiff believes these failures were willful and intentional.

26 38. Plaintiff also believes these failures were malicious, fraudulent, or oppressive.
27 Employer would further be liable for civil penalties pursuant to Labor Code section
28 2699(f)(2)(B)(ii).

1 39. **Failure to pay employees all wages due at time of termination/resignation:** An
2 employer is required to pay all unpaid wages timely after an employee's employment ends. The
3 wages are due immediately upon termination (Labor Code section 201) or within seventy-two (72)
4 hours of resignation (Labor Code section 202).

5 40. As a derivative of Plaintiff's allegations above, because Defendants failed to pay
6 Plaintiff and other current and former aggrieved California-based hourly non-exempt employees all
7 their earned wages (including minimum wages, overtime wages, meal period premium wages,
8 and/or rest period premium wages), Defendants failed to pay those employees timely after each
9 employee's termination and/or resignation, in violation of Labor Code sections 201, 202, and 203.

10 41. Plaintiff believes these failures were willful and intentional.

11 42. Plaintiff also believes these failures were malicious, fraudulent, or oppressive.
12 Employer would further be liable for civil penalties pursuant to Labor Code section
13 2699(f)(2)(B)(ii).

14 43. Labor Code sections 2699, subdivisions (a) and (g) authorize an aggrieved employee,
15 on behalf of himself or herself and other current or former employees, to bring a civil action to
16 recover civil penalties against all Defendants pursuant to the procedures specified in Labor Code
17 section 2699.3.

18 44. Plaintiff has complied with the procedures for bringing suit specified in Labor Code
19 section 2699.3. On September 23, 2025, Plaintiff filed a PAGA Claim Notice with the LWDA and
20 provided notice to Defendants by certified mail which provided notice of the specific provisions of
21 the Labor Code alleged to have been violated, including the facts and theories to support the
22 violations alleged.

23 45. Pursuant to Labor Code section 2699.3, the LWDA must give written notice by
24 certified mail to the parties that it intends to investigate the alleged violations of the Labor Code
25 within 60 days of the date of the complainant's written notice. The LWDA failed to provide the
26 parties notice within 60 days of the date of Plaintiff's PAGA Claim Notice that the LWDA intends
27 to investigate Plaintiff's claims.

28 46. Pursuant to Labor Code sections 2699(a) and (f), Plaintiff is entitled to recover civil

1 penalties for Defendants' violations of Labor Code sections 201, 202, 203, 204, 223, 226(a), 226.7,
2 246, 510, 512, 1194, and 1198., During Plaintiff's employment and continuing through the present,
3 preceding Plaintiff sending the initial PAGA Claim Notice to the LWDA to the present, in the
4 following amounts:

5 a. For violations of Labor Code sections 201, 202, 203, 226(a), 226.7, 1198, and
6 2802; one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation
7 and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent
8 violation [penalty amounts established by Labor Code section 2699(f)(2)].

9 b. For violations of Labor Code section 226(a), alternatively, two hundred fifty
10 dollars (\$250) for each employee for each pay period for the initial violation, and for each
11 subsequent violation, one thousand dollars (\$1000) for each underpaid employee for each pay period
12 [penalty amounts established by Labor Code section 226.3].

13 c. For violations of Labor Code section 510 and 512, fifty dollars (\$50) for each
14 employee for each pay period for the initial violation, and for each subsequent violation, one
15 hundred dollars (\$100) for each underpaid employee for each pay period [penalty amounts
16 established by Labor Code section 558].

17 d. For violations of Labor Code section 204, one hundred dollars (\$100) for
18 each failure to pay each employee in any initial violation, and for each subsequent violation, or any
19 willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee,
20 plus 25 percent of the amount unlawfully withheld [penalty amounts established by Labor Code
21 section 210].

22 e. For violations of Labor Code section 223, one hundred dollars (\$100) for
23 each failure to pay each employee in any initial violation, and for each subsequent violation, or any
24 willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee,
25 plus 25 percent of the amount unlawfully withheld [penalty amounts established by Labor Code
26 section 225.5].

27 47. Pursuant to Labor Code section 2699(g), Plaintiff is entitled to an award of
28 reasonable attorneys' fees and costs in connection with his claims for civil penalties.

PRAYER FOR RELIEF

WHEREFORE, PLAINTIFF, ON BEHALF OF HIMSELF AND ON OTHER AGGRIEVED EMPLOYEES, PRAYS AS FOLLOWS:

ON THE FIRST CAUSE OF ACTION:

1. That Defendants be found to have violated the provisions of the Labor Code and the IWC Wages Orders as to the Plaintiff and aggrieved employees;

2. For any and all legally applicable penalties during the relevant statute of limitations subject to any permissible tolling, including but not limited to those recoverable under the California Labor Code, including but not limited to sections 210, 225.5, 226.3, 558, 2699(f);

3. For attorneys' fees and costs of suit, including but not limited to those recoverable under California Labor Code section 2699(g); and

4. For such and other further relief, in law and/or equity, as the Court deems just or appropriate.

Dated: December 18, 2025

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