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Attorneys for Plaintiffs ROSALBA MARTINEZ and ISABEL
TOPETE CARAPIA

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

ROSALBA MARTINEZ and ISABEL
TOPETE CARAPIA, individually and on behalf
of all others similarly situated,

Plaintiffs,

v.

CARDENAS MARKETS, LLC and DOES 1 to
20, Inclusive,

Defendants.

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO

SEP 18 2023

BY: *Amel Barajas* Deputy

Case No. **CIV SB 2322676**

**COMPLAINT FOR: (1) FAILURE TO
AUTHORIZE AND PERMIT PAID
REST BREAKS; (2) FAILURE TO
PROVIDE MEAL PERIODS; (3)
FAILURE TO PROVIDE ACCURATE
ITEMIZED WAGE STATEMENTS; (4)
FAILURE TO PROVIDE ALL WAGES
DUE AT SEPARATION; (5)
VIOLATION OF BUSINESS &
PROFESSIONS CODE § 17200, ET
SEQ; (6) CIVIL PENALTIES UNDER
THE PRIVATE ATTORNEYS
GENERAL ACT OF 2004, LABOR
CODE § 2698, ET SEQ**

DEMAND FOR JURY TRIAL

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I. INTRODUCTION

1. This is an action brought by Plaintiffs Rosalba Martinez and Isabel Topete Carapia (collectively “Plaintiffs”) against Cardenas Markets, LLC and other as yet unnamed defendants (collectively “Defendants”), pursuant to Labor Code § 2698 et seq. (the Private Attorneys General Act of 2004 (“PAGA”)) alleging unfair business practices and violations of the California Labor Code and Industrial Welfare Commission Wage Order 7. Plaintiffs seek restitution, equitable accounting, statutory penalties and damages, including declaratory and injunctive relief, attorney’s fees, and costs of suit.

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II. PARTIES

2. Plaintiff Rosalba Martinez was at all relevant times herein employed by Defendants as a Pastry Cashier in San Bernardino, California. Specifically, Ms. Martinez worked for Defendants on or about October 2020 until December 2022.

3. Plaintiff Isabel Topete Carapia was at all relevant times herein employed by Defendants as a Pastry Clerk in San Bernardino, California. Specifically, Ms. Carapia worked for Defendants on or about May 2022 until March 2023.

4. Plaintiff reserves the right to seek leave to amend this complaint to add new plaintiffs, if necessary, in order to establish suitable representative(s) pursuant to *La Sala v. American Savings and Loan Association* (1971) 5 Cal.3d 864, 872, and other applicable law.

5. Cardenas Markets, LLC. is a Limited Liability Company doing business in California, and is a “person” as defined in Labor Code § 18, and California Business and Professions Code (“Business & Professions Code”) § 17201. In addition, Cardenas Markets, LLC is an “employer” as that term is used in the Labor Code and in the California Industrial Welfare Commission’s orders (“Wage Orders”) regulating wages, hours, and working conditions.

6. Plaintiffs do not know the true names and capacities of Defendants sued herein as DOES 1 through 20, and Plaintiffs therefore sue these Defendants by fictitious names. Plaintiffs will amend this complaint to state the true names and capacities when ascertained. Plaintiffs are informed and believe and thereon allege that each of the fictitiously named Defendants is

1 responsible in some manner for the occurrences and damages alleged herein, and that Plaintiffs'
2 damages as hereinafter set forth were approximately caused by said Defendants.

3 7. Venue is proper based on the location of the Defendants at 2045 E Highland Ave,
4 San Bernardino, CA 92404 in San Bernardino County where the events giving rise to this
5 Complaint occurred.

6 8. The relief requested is within the jurisdiction of this Court.

7 **III. FACTUAL ALLEGATIONS**

8 9. From approximately October 2020 through December 1, 2022, Defendants
9 employed Plaintiff Rosalba Martinez to perform work as a Pastry Cashier at the Defendants'
10 grocery retail store located at 2045 E Highland Ave, San Bernardino, CA 92404. She was paid an
11 hourly wage.

12 10. From approximately May 2022 through March 2023, Defendants employed
13 Plaintiff Isabel Topete Carapia to perform work as a Pastry Clerk at the Defendants' grocery retail
14 store located at 2045 E Highland Ave, San Bernardino, CA 92404. She was paid an hourly wage.

15 11. For the entire duration of Plaintiffs' employment with Defendants, Defendants had
16 a policy and practice of regularly failing to provide Plaintiffs off-duty meal and rest periods.
17 Defendants failed to provide Plaintiffs with uninterrupted meal periods, failed to authorize and
18 permit Plaintiffs to take uninterrupted rest periods, and failed to furnish accurate wage statements
19 to Plaintiffs. Plaintiffs were frequently compelled to skip their meal periods altogether, and rarely
20 had a chance to take a rest break.

21 12. Throughout the statutory period, Defendants wrongfully failed to provide Plaintiffs
22 with legally compliant meal periods. Defendants sometimes, but not always, required Plaintiffs to
23 work in excess of five consecutive hours a day without providing 30-minute, continuous and
24 uninterrupted, duty-free meal period for every five hours of work, or without compensating
25 Plaintiffs for meal periods that were not provided by the end of the fifth hour of work or tenth
26 hour of work. Defendants also did not adequately inform Plaintiff and Aggrieved Employees of
27 their right to take a meal period by the end of the fifth hour of work, or, for shifts greater than 10
28 hours, by the end of the tenth hour of work. Defendants also failed to accurately record meal

1 periods. Accordingly, Defendants' policy and practice was to not provide meal periods to
2 Plaintiffs in compliance with California law.

3 13. Throughout the statutory period, Defendants wrongfully failed to authorize and
4 permit Plaintiffs to take timely and duty-free rest periods. Defendants sometimes, but not always,
5 required Plaintiff and Aggrieved Employees to work in excess of four consecutive hours a day
6 without Defendants authorizing and permitting them to take a continuous and uninterrupted, rest
7 period for every four hours of work (or major fraction of four hours), or without compensating
8 Plaintiffs for rest periods that were not authorized or permitted. Defendants also did not
9 adequately inform Plaintiffs of their right to take a rest period. Moreover, Defendants did not
10 have adequate policies or practices permitting or authorizing rest periods for Plaintiffs, nor did
11 Defendants have adequate policies or practices regarding the timing of rest periods. Defendants
12 also did not have adequate policies or practices to verify whether Plaintiffs were taking their
13 required rest periods. Further, Defendants did not maintain accurate records of employee work
14 periods, and therefore Defendants cannot demonstrate that Plaintiffs took rest periods during the
15 middle of each work period. Plaintiffs were also not permitted to leave the premises during rest
16 breaks. Accordingly, Defendants' policy and practice was to not authorize and permit Plaintiffs to
17 take rest periods in compliance with California law.

18 14. Throughout the statutory period, Defendants willfully failed and refused to timely
19 pay Plaintiffs at the conclusion of their employment all wages for all minimum wages, meal
20 period premium wages, and rest period premium wages.

21 15. Further, for the entire duration of Plaintiffs' employment with Defendants,
22 Defendants had a policy and practice of failing to pay Plaintiffs one additional hour of pay at their
23 regular rate of compensation for each meal break and rest break that Defendants failed to provide
24 to Plaintiffs.

25 16. Throughout the statutory period, Defendants failed to furnish Plaintiffs with
26 accurate, itemized wage statements showing all applicable hourly rates, and all gross and net
27 wages earned (including correct hours worked, correct wages earned for hours worked, correct
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1 wages for meal periods that were not provided in accordance with California law, correct wages
2 for rest periods that were not authorized and permitted to take in accordance with California law).

3 17. For the entire duration of Plaintiffs' employment with Defendants, Defendants'
4 unlawful conduct alleged herein has been widespread, repeated, and willful.

5 18. The wages, hours and working conditions of individuals employed as Pastry
6 Cashiers are regulated by Industrial Welfare Commission Wage Order 7-2001, Cal. Code Regs.
7 tit. 8, § 11070 ("Wage Order 7") and various provisions of the Labor Code detailed herein.

8 19. Under the terms of Wage Order 7 § 12(A), employees are entitled to two paid
9 uninterrupted, net ten minute rest periods during each eight hour shift.

10 20. Labor Code § 226.7 requires employers to provide employees with rest periods
11 mandated by the applicable Wage Order and provides for wages of one additional hour of pay at
12 the employee's regular rate of compensation for each workday such rest period was not provided.

13 21. Plaintiffs have not been compensated with the premium pay of one additional hour
14 for each workday the Defendants have not provided two fully paid ten minute rests periods.

15 22. Labor Code § 226(a) requires that an employer shall, at the time of each payment
16 of wages, provide each employee with an itemized statement in writing showing, among other
17 things, gross wages earned; total hours worked; the name and address of the legal entity that is the
18 employer; all applicable hourly rates in effect during the pay period and the corresponding
19 number of hours worked at each rate; and the number of piece rate units earned and the applicable
20 piece rate if the employee is paid on a piece rate basis. An equivalent provision appears in Wage
21 Order 7, § 7.

22 23. Labor Code §§ 201 and 202 require an employer to pay out all wages earned and
23 unpaid to an employee upon separation. Labor Code § 203 penalizes employers who fail to
24 comply with §§ 201 and 202 by requiring them to continue paying wages at the same rate until
25 payment is executed for up to 30 days.

26 24. By failing to provide premium pay for missed rest periods, Defendants have failed
27 to provide all wages due at separation.

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1 **FIRST CAUSE OF ACTION**

2 **(FAILURE TO AUTHORIZE AND PERMIT PAID REST BREAKS)**

3 **(Wage Order 7, § 12, 20, Labor Code § 226.7)**

4 25. Plaintiffs reallege, and incorporate by reference each and every allegation set forth
5 in paragraphs 1 through 24 above, inclusive, as though fully set forth at length herein.

6 26. Wage Order 7, § 12 requires an employer to authorize and permit paid rest breaks
7 at a rate of ten (10) minutes for every four (4) hours worked or greater fraction thereof.

8 27. Labor Code § 226.7 and Wage Order 7, § 12 require the payment of compensation
9 of one additional hour of pay for each work day that the paid rest break(s) is not provided in
10 accordance with the applicable Wage Order.

11 28. During the statutory period, Defendants consistently failed to provide Plaintiff
12 with paid rest breaks.

13 29. Defendants' failure to provide paid rest breaks in accordance with Wage Order 7,
14 § 12 entitle Plaintiffs to the remedy provided in Labor Code § 226.7 and Wage Order 7, § 12(B).

15 30. Labor Code § 218 provides wage claimants with a private right of action to
16 recover wages under the Labor Code. The payments owed to employees for paid rest breaks not
17 provided are premium wages under Labor Code § 226.7.

18 31. Wage Order 7, § 20(A) provides for civil penalties for violations of the Wage
19 Order. As a result of Defendants' violations of Wage Order 7, § 12, Plaintiffs are entitled to and
20 hereby seek civil penalties as authorized by law.

21 **SECOND CAUSE OF ACTION**

22 **(FAILURE TO PROVIDE MEAL PERIODS)**

23 **(Wage Order 7, § 11, 20, Labor Code § 512)**

24 32. Plaintiffs reallege, and incorporate by reference each and every allegation set forth
25 in paragraphs 1 through 31 above, inclusive, as though fully set forth at length herein.

26 33. Wage Order 7, § 11 requires an employer to provide their employees with a 30-
27 minute meal period for every five (5) hours worked.

34. Labor Code § 226.7 and Wage Order 7, § 11 require the payment of compensation of one additional hour of pay for each work day that the meal period is not provided in accordance with the applicable Wage Order.

35. During the statutory period, Defendants consistently failed to provide Plaintiffs with meal periods.

36. Defendants' failure to provide meal periods in accordance with Wage Order 7, § 11 entitles Plaintiff to the remedy provided in Labor Code § 226.7 and Wage Order 7, § 11(D).

37. Labor Code § 218 provides wage claimants with a private right of action to recover wages under the Labor Code. The payments owed to employees for meal periods not provided are premium wages under Labor Code § 226.7.

38. Wage Order 7, § 20(A) provides for civil penalties for violations of the Wage Order. As a result of Defendants' violations of Wage Order 7, § 11, Plaintiffs are entitled to and hereby seeks civil penalties authorized by law.

THIRD CAUSE OF ACTION

(FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS)

(Labor Code §§ 226, 226.2, 226.6, 1174, 2810.5, Wage Order 7, § 7)

39. Plaintiffs reallege, and incorporate by reference each and every allegation set forth in paragraphs 1 through 38 above, as though fully set forth at length herein.

40. California Labor Code § 226(a) states that every employer shall, semi-monthly or at the time of each payment of wages, furnish each of his or her employees an accurate itemized statement in writing showing substantial detailed information, including but not limited to, each hour worked and gross wages earned. Wage Order 16, § 6 contains similar requirements.

41. Labor Code § 1174(d) requires the employer to keep payroll records showing hours worked and wages paid.

42. Labor Code § 2810.5 requires an employer provide employees with timely, accurate written notice of any changes to any pay plan used to determine the employee's compensation as well an initial notice at the time of hiring. Defendants failed to comply with Labor Code § 2810.5.

43. During the statutory period, Defendants consistently failed to provide Plaintiffs with accurate itemized statements and keep adequate payroll records because they failed to provide employees with rest periods mandated by the applicable Wage Order and failed to provide for wages of one additional hour of pay at the employee's regular rate of compensation for each workday such rest period was not provided.

44. As a result of Defendants' knowing and intentional failure to comply with the provisions of Labor Code §§ 226(a) and 1174(d), 1776, Plaintiffs have been deprived of wage information and wages entitled to them by law. This establishes injury under 226(e)(2).

45. Plaintiffs are entitled to and seek the remedy provided in Labor Code § 226(e):

46. [T]he greater of all actual damages or fifty dollars (\$50) for the initial pay period in which the violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000) and is entitled to an award of costs and reasonable attorney's fees.

47. Plaintiffs seek injunctive relief against the Defendants to ensure future compliance and attorney's fees under 226(h).

FOURTH CAUSE OF ACTION

(FAILURE TO PROVIDE ALL WAGES DUE AT SEPARATION)

(Labor Code §§ 201, 202, 203, 218, 218.5, 218.6)

48. Plaintiffs reallege, and incorporate by reference each and every allegation set forth in paragraphs 1 through 47 above, inclusive, as though fully set forth at length herein.

49. Labor Code § 201 provides that an employer who terminates an employee must immediately pay that employee all wages owing on separation.

50. Similarly, Labor Code § 202 provides that an employee who quits is entitled to all wages owing within seventy-two (72) hours of quitting, unless that employee provides at least seventy-two hours' notice to the employer, in which case the employer immediately must pay all wages owing at the time of separation.

51. Labor Code § 203 provides that if an employer willfully fails to pay wages when due to an employee who is discharged or quits, the employee's wages continue at the same rate

1 until the employer pays them or until an action is initiated, but not for more than thirty (30)
2 days.

3 52. Plaintiffs have been deprived of wages immediately owed upon separation due to
4 Defendants' policy and practice of failing to provide correct wages for all hours worked and
5 failing to pay premium pay owed for missed rest periods.

6 53. Defendants' failure to pay all wages at separation was in violation of Labor Code
7 §§ 201 and 202.

8 54. In addition to the wages due for prior work, Plaintiffs are entitled to one day's
9 wages for every day Defendants failed to pay wages owed on termination, up to thirty (30) days'
10 pay, plus interest on the unpaid amounts, in amounts to be proven at trial.

11 55. Labor Code § 218 provides for a private right of action to recover wages and
12 penalties under the Labor Code. Plaintiff seeks to recover § 203 penalties directly under § 218.

13 56. Labor Code § 218.5 provides for attorneys' fees and costs for a prevailing plaintiff
14 who seeks to recover wages and penalties. Plaintiff seeks to recover attorneys' fees and costs in
15 this action brought for the nonpayment of wages.

16 57. Labor Code § 218.6 provides for interest on all due and unpaid wages at the rate of
17 interest specified in subdivision (b) of Section 3289 of the Civil Code, which shall accrue from
18 the date that the wages were due and payable.

19 Wherefore, Plaintiff prays judgment as set forth below.

20 **FIFTH CAUSE OF ACTION**

21 **(VIOLATION OF CALIFORNIA'S UNFAIR COMPETITION LAW)**

22 **(Business & Professions Code §§ 17200, *et seq.*)**

23 58. Plaintiffs reallege, and incorporate paragraphs 1 through 57, inclusive, as though
24 set forth fully herein.

25 59. California Business and Professions Code § 17200, *et seq.* prohibits unfair
26 competition in the form of any unlawful, unfair, deceptive, or fraudulent business practice.

1 60. During the statutory period, the Defendants committed unlawful acts as defined by
2 California Business & Professions Code § 17200. The Defendant have engaged in unlawful,
3 unfair and fraudulent business practices including, but not limited to, violations of:

- 4 a) Wage Order 7, § 7, 11, 12, and 20;
5 b) Labor Code § 226.7, 226, 226.2, 226.6, 1174, and 2810.5
6 c) Labor Code §§ 201, 202, 203 218, 218.5, and 218.6;
7 d) Labor Code §§ 512.

8 61. The violation of these laws serve as unlawful, unfair and fraudulent predicate acts
9 for purposes of Business & Professions Code § 17200 and remedies are provided therein under
10 Business & Professions Code § 17203. Plaintiffs have suffered direct economic injury in that he
11 has not been paid all wages and compensation due in a timely manner.

12 62. The acts and practices described in this Complaint constitute unlawful, unfair and
13 fraudulent business practices, and unfair competition by the Defendants within the meaning of
14 Business and Professions Code § 17200, et. seq.

15 63. Business & Professions Code § 17203 provides that the Court may restore to any
16 person in interest any money or property which may have been acquired by means of such unfair
17 competition and to which those persons have an ownership interest. Plaintiffs are entitled to
18 restitution pursuant to Business & Professions Codes §§ 17203 and 17208 for all wages
19 unlawfully withheld from him during the four years prior to the filing of this
20 Complaint. Plaintiffs will, upon leave of the Court, amend this Complaint to state such amounts
21 when they become ascertained.

22 64. Plaintiffs' success in this action will enforce important rights affecting the public
23 interest, and in that regard, injunctive and declaratory relief is necessary and appropriate to
24 prevent the Defendants from repeating wrongful business practices alleged above.

25 65. To prevent the Defendants from profiting and benefiting from their wrongful and
26 illegal acts, it is appropriate and necessary to enter an order requiring the Defendants to restore
27 Plaintiffs all monies that are owed.

66. An actual controversy has arisen and now exists relating to the rights and duties of the Defendants and Plaintiffs as to whether Defendants must pay wages for each hour worked; provide premium pay for unpaid rest periods, maintain accurate payroll records, provide an itemized wage statement pursuant to Labor Code § 226; provide an initial written notice of the pay plan and written notice of any changes to the pay plan pursuant to § 2810.5 and all compensation at the time of discharge or quitting.

67. Plaintiffs require a declaration by this Court that Plaintiffs are entitled to be paid at no less than twice the minimum wage for each hour worked; to be compensated at time and one-half for hours worked beyond 8 in a day and/or 40 in a week, to be compensated premium pay for unpaid rest periods pursuant to California Law; provide the wage statement required by Labor Code § 2810.5; to be compensated for all wages owed at the time of separation and to receive penalties for these violations.

68. Plaintiffs herein take upon themselves enforcement of these laws and lawful claims. There is a financial burden incurred in pursuing this action and it would be against the interests of justice to penalize Plaintiffs by forcing him to pay attorneys' fees from the recovery in this action. The enforcement of the state wage and hours laws will confer a public benefit as the failure to provide appropriate wages for all hours worked and failure to provide paid rest breaks are both actions that violate the state's public policy of wage and rest protections for employees. Therefore, attorneys' fees are appropriate pursuant to California Code of Civil Procedure § 1021.5 as well as Labor Code §§ 218.5, 226 and 1194 and any other applicable statutes.

SIXTH CAUSE OF ACTION

(THE PRIVATE ATTORNEYS GENERAL ACT)

(Labor Code §§ 2698 *et seq.*)

69. Plaintiffs reallege, and incorporate each and every allegation contained above, as though fully set forth herein.

70. On June 13, 2023, Plaintiffs complied with notice requirements pursuant to Labor Code section 2699.3. A copy of the letter sent to the LWDA is attached hereto as **Exhibit A**,

1 indicating that the LWDA and Defendants were put on notice of the claims alleged here and that
2 the notice requirement has been satisfied. Sixty-five days have passed and the LWDA has not
3 indicated intent to investigate the claims. Therefore, Plaintiffs may proceed with this action in a
4 representative capacity. The substance and violations set forth in this Complaint of which the
5 LWDA was provided timely notice, Plaintiffs have also sent a copy of this PAGA Representative
6 Action Complaint to the LWDA.

7 71. Plaintiffs are aggrieved employees as defined in Labor Code Section 2699(a).
8 Plaintiffs bring this cause of action on behalf of all current and former California Non-Exempt
9 Employees of Defendants.

10 72. Pursuant to Labor Code section 2699(a) Plaintiffs seek to recover civil penalties
11 for which Defendants are liable due to numerous Labor Code violations as set forth in this
12 Complaint, including without limitation Labor Code section 226, 226.3, 1174, 1174.5, 1175,
13 2802, and, 2698 et seq., applicable IWC Wage Orders and California Code of Regulations, Title
14 8, section 11000 et. seq.

15 73. California Labor Code section 226(a) sets forth the following “An employer,
16 semimonthly or at the time of each payment of wages, shall furnish to his or her employee, either
17 as a detachable part of the check, draft, or voucher paying the employee's wages, or separately if
18 wages are paid by personal check or cash, an accurate itemized statement in writing showing (1)
19 gross wages earned, (2) total hours worked by the employee, except as provided in subdivision
20 (j), (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid
21 on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of
22 the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive
23 dates of the period for which the employee is paid, (7) the name of the employee and only the last
24 four digits of his or her social security number or an employee identification number other than a
25 social security number, (8) the name and address of the legal entity that is the employer and, if the
26 employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and
27 address of the legal entity that secured the services of the employer, and (9) all applicable hourly
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1 rates in effect during the pay period and the corresponding number of hours worked at each
2 hourly rate by the employee.”

3 74. On information and belief, Defendants have failed to record all or some of the item
4 delineated in Industrial Wage Orders and Labor Code § 226, including Labor Code § 226 (a)(9)
5 by failing to list the applicable rates and hours with respect to Plaintiffs overtime pay on wage
6 statements issued to Plaintiff and Aggrieved Employees. Rather, whenever overtime wages were
7 paid to the employee, the pay stubs only shows a flat amount without any applicable rate and hour
8 to show how the overtime pay amount was calculated.

9 75. Plaintiffs and the Aggrieved Employees have been injured as they were unable to
10 determine whether they had been paid correctly for all hours worked per pay period among other
11 things.

12 76. Pursuant to Labor Code section 226.3, any employer who violates subdivision (a)
13 of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250)
14 per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee
15 for each violation in a subsequent citation, for which the employer fails to provide the employee a
16 wage deduction statement or fails to keep the records required in subdivision (a) of Section 226.

17 77. Labor Code § 2802 requires Defendants to indemnify Plaintiffs and Aggrieved
18 Employees for necessary expenditures incurred in direct consequences of the discharge of his or
19 her duties. As a necessary part of employment, Plaintiff and on information and belief Aggrieved
20 Employees, were not adequately reimbursed by Defendants for expenses related to all expenses
21 incurred as results of personal cell phone usage, which was incurred as a direct consequence of
22 the discharge of duties by Plaintiffs and Aggrieved Employees. Despite these realities of the job,
23 Defendants failed to provide reimbursements for the use of personal cell phones necessary to
24 carry out their job duties.

25 78. Additionally, Defendants have no accurate records relating to aggrieved
26 employees' work periods, total daily hours worked, total hours worked per payroll period and
27 applicable pay rates, in violation of Wage Order. Similarly, Defendants failed to maintain
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1 accurate records relating to hours worked daily in violation of Labor Code sections 1174(d),
2 1174.5.

3 79. As a result of Defendants' unlawful conduct, Plaintiffs and Aggrieved employees
4 are entitled to penalties to the extent they were not paid premium wages for missed rest breaks
5 and meal periods.

6 80. Plaintiffs and the Representative Aggrieved Employees are entitled to recover
7 Penalties and attorneys' fees and costs under Labor Code section 2698, et. seq.

8 **IV. PRAYER FOR RELIEF**

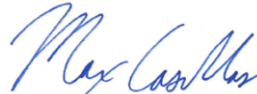
9 Plaintiff prays for judgment as follows:

- 10 1. For preliminary and permanent injunctive relief prohibiting the Defendants, their
11 officers, agents and all those acting in concert with them from committing these
12 violations herein alleged;
- 13 2. For an award of damages in an amount according to proof with interest thereon;
14 For an award of restitution and wages according to proof under Labor Code §§
15 201-203, 226.7, 246, 510, 1182.12, 1194, 1197, 1770, *et. seq.*, 1776 *et. seq.*, 1810
16 and 1815; Wage Order 7, §§ 3, 4, 8, 11, 19; and Business & Professions Code §§
17 17200 and 17203 and any other applicable provision;
- 18 3. For a declaratory judgment that Defendants violated Business and Professions
19 Code §§ 17200, *et seq.*, as a result of the aforementioned violations of the Labor
20 Code and IWC wage orders and of California public policy protecting wages;
- 21 4. For an equitable accounting to restore to Plaintiff all current wages he is due;
- 22 5. For penalties under Labor Code §§ 203, 226, 226.6, 558, 1197.1, 2699, Wage
23 Order 7, § 20 and any other applicable provisions;
- 24 6. For interest under Labor Code §§ 218.6, 1194, 1197.1 and any other applicable
25 provisions;
- 26 7. For liquidated damages under Labor Code §§ 1194.2 and 1197.1;

- 1 8. For an award of reasonable attorneys' fees, costs and interest thereon pursuant to
2 Labor Code §§ 218.5, 226, 1194, 2699; Code of Civil Procedure § 1021.5 and any
3 other applicable provision; and,
4 9. For such other and further relief as this Court deems just and proper.
5

6 Dated: September 15, 2023

WEINBERG, ROGER & ROSENFELD
A Professional Corporation



By: Maximillian D. Casillas
 Hugo E. Garcia

Attorneys for Plaintiffs ROSALBA MARTINEZ
and ISABEL TOPETE CARAPIA

EXHIBIT A

STEWART WEINBERG
DAVID A. ROSENFELD
WILLIAM A. SOKOL
ANTONIO RUIZ
MATTHEW J. GAUGER
ASHLEY K. IKEDA
LINDA BALDWIN JONES
ALAN G. CROWLEY
KRISTINA L. HILLMAN
BRUCE A. HARLAND
CAREN P. SENCER
ANNE I. YEN
JANNAH V. MANANALAN
MANUEL A. BOIGUES
KERIANNE R. STEELE
GARY P. PROVENCHER
EZEKIEL D. CARDER
LISL R. SOTO
JOLENE KRAMER
CAITLIN E. GRAY
TIFFANY L. CRAIN
XOCHITL A. LOPEZ
DAVID W.M. FUJIMOTO
ANDREA C. MATSUOKA
ALEXANDER S. NAZAROV
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KATHARINE R. McDONAGH
WILLIAM T. HANLEY
BISMA SHAHBAZ
MATTHEW J. ERLE
MAXIMILLIAN D. CASILLAS
CRAIG L. SCHECHTER
MICHAELA F. POSNER
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JOSEPH T. ADAMIAK
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WINNIE VIEN
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SARA J. ZOLLNER
NOREY L. NAVARRO

OF COUNSEL

ROBERTA D. PERKINS
ROBERT E. SZYKOWNY
ANDREA K. DON
LORI K. AQUINO

LABOR EDUCATOR

NINA FENDEL (Retired Attorney)

Admitted in California, unless
otherwise noted
Admitted in Hawaii
Also admitted in Nevada
Also admitted in Illinois
Also admitted in New York and
Alaska
Admitted in Nevada and
Washington
Also admitted in Idaho

June 13, 2023

VIA ELECTRONIC FILING

Labor Workforce Development Agency
800 Capitol Mall, Suite 5000
Sacramento, CA 95814

Re: PAGA Claim Notice

To Whom It May Concern:

Pursuant to the requirements of Labor Code section 2699.3, aggrieved employees Plaintiffs Rosalba Martinez and Isabel Topete Carapia ("Plaintiffs") hereby notify the Labor Workforce Development Agency ("LWDA") of the labor violations, and the facts and circumstances giving rise to them, committed by their former employer Cardenas Markets, LLC and Cardenas Markets, Inc. ("Cardenas") against Plaintiffs and other aggrieved employees that were employed as Pastry Cashiers and Clerks at the Cardenas' grocery store location in San Bernardino, California.

This letter also serves to notify Cardenas of the labor law violations against Plaintiffs and other aggrieved employees, and the facts and circumstances giving rise to those violations. Plaintiffs intend to seek penalties against Cardenas for each and every violation referenced herein to the fullest extent permitted by law.

Statement of Facts

Cardenas is a grocery store chain registered with the Secretary of State as a Limited Liability Company. Plaintiffs worked at the San Bernardino grocery store located at 2045 E Highland Ave, San Bernardino, CA 92404 as a Pastry Cashier and a Pastry Clerk.

The primary responsibility of Pastry Cashiers and Pastry Clerks is to provide customer service at the bakery and food counter at the Cardenas grocery store. All Pastry Cashiers and Pastry Clerks are required to attend to customers, stock up bakery and food items, ring up customers, prepare food items, and maintain the work area clean among other tasks.

Plaintiffs began working for Cardenas in 2020. Plaintiffs allege that, for at least the last two years, it has been Cardenas' practice to require Pastry Cashiers and Pastry Clerks to skip their rest period and meal breaks. Plaintiffs allege that this practice violates California's rest and meal period law and results in other violations of the law.

Legal Violations and Theories of Recovery

Failure to Provide Rest Periods: Labor Code section 226.7 and IWC Wage Orders

Plaintiffs allege that Cardenas violated California Labor Code section 226.7 and IWC Wage Order No. 7. Labor Code section 226.7 makes it unlawful for employers to require employees to work during a rest period mandated pursuant to an applicable wage order. California Labor Code Sections 1171 and 1173 have given the California Industrial Welfare Commission jurisdiction to enact Wage Orders as enforceable law. Wage Order 7 governs the work of Plaintiffs and other employees at the grocery store and requires Cardenas to authorize and permit all employees to take rest periods. Wage Order No. 7, section 12, subdivision (A) provides that every employer shall authorize and permit all employees to take rest periods, which, insofar as practicable, shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours of work or major fraction thereof.

For at least the last two years, Plaintiffs allege that Cardenas violated Labor Code section 226.6 and IWC Wage Order 7. Cardenas by unlawfully denying Plaintiffs their rest periods violated the labor code and IWC Wage Order 7.

Under California Labor Code section 226.7, subdivision (c), an employer who fails to provide a required rest period must, as compensation, pay the employee with the premium wage of one hour at the regular rate for each day the break is not provided. Wage Order No. 7 section 12, subdivision (B), states that if an employer fails to provide an employee with a rest period in accordance with the applicable provisions of the Wage Order, the employer shall pay the employee one hour of pay at the employee's regular rate of compensation for each workday that the rest period is not provided.

Pursuant to California Labor Code section 226.7 and Wage Order No. 7, Plaintiffs allege that Cardenas is liable to Plaintiffs and other employees for the full amount of all their unpaid rest period compensation, with interest. Cardenas is also liable to Plaintiffs and other aggrieved employees for civil penalties pursuant to Wage Order No. 7, section 20, and Labor Code section 558 which state that any employer who violates Wage Order No. 7 shall be subject to a civil penalty of \$50 for an initial violation for each underpaid employee for each pay period during which the employee was underpaid in addition to the amount which is sufficient to recover unpaid wages and \$100 for each subsequent violation. These penalties are in addition to any other civil penalties provided by law.

Failure to Provide Uninterrupted Meal Periods: Labor Code section 226.7, 512, and IWC Wage Orders

Plaintiffs allege that Cardenas violated California Labor Code section 226.7, 512 and IWC Wage Order No. 7. Labor Code section 226.7 requires employers to provide an unpaid, uninterrupted meal break period mandated pursuant to an applicable wage order. California Labor Code Sections 1171 and 1173 have given the California Industrial Welfare Commission jurisdiction to enact Wage Orders as enforceable law. California Labor Code section 512 and Wage Order 7 govern the work of Plaintiffs and other employees at the grocery store and require Cardenas to provide a 30 minute uninterrupted meal period. Wage Order No. 7, section 11, subdivision (A) provides that every employer shall authorize and permit all employees to take a meal period during an 8-hour shift.

For at least the last two years, Plaintiffs allege that Cardenas violated Labor Code section 226.6, 512, and IWC Wage Order 7. Cardenas by unlawfully denying Plaintiffs an uninterrupted 30-minute meal period violated the labor code and IWC Wage Order 7.

Under California Labor Code section 226.7, subdivision (c), an employer who fails to provide a required meal period must, as compensation, pay the employee the premium wage of one hour at the regular rate

for each day the break is not provided. Wage Order No. 7 section 11, subdivision (D), states that if an employer fails to provide an employee with a meal period in accordance with the applicable provisions of the Wage Order, the employer shall pay the employee one hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided.

Pursuant to California Labor Code section 226.7 and Wage Order No. 7, Plaintiffs allege that Cardenas is liable to Plaintiffs and other employees for the full amount of all their unpaid meal period compensation, with interest. Cardenas is also liable to Plaintiffs and other aggrieved employee for civil penalties pursuant to Wage Order No. 7, section 20, and Labor Code section 558 which state that any employer who violates Wage Order No. 7 shall be subject to a civil penalty of \$50 for an initial violation for each underpaid employee for each pay period during which the employee was underpaid in addition to the amount which is sufficient to recover unpaid wages and \$100 for each subsequent violation. These penalties are in addition to any other civil penalties provided by law.

Derivative Claims: Failure to Provide Accurate Itemized Wage Statements (Labor Code §§ 226, 226.2, 226.6, 1174, 2810.5, Wage Order 7, § 7), Failure to Pay All Wages Due and Owing Upon Separation From Employment (Labor Code §§ 201, 202, 203, 218, 218.5, 218.6), and violations of California's Unfair Competition Law (Business and Professions Code § 17200 et seq.)

All remaining claims of Plaintiffs against Cardenas are derivative of the alleged rest period and meal period violations.

Plaintiffs allege that, under Labor Code section 226, subdivision (a), Cardenas is required to provide regular accurate itemized wage statements to Plaintiffs and other Pastry Cashiers and Pastry Clerks employed at the grocery store showing, among other things, hours worked and all applicable hourly rates during the relevant pay period. By failing to include premium wages, Plaintiffs allege that Cardenas knowingly and intentionally failed to provide Pastry Cashiers and Pastry Clerks with itemized wage statements showing all wages earned.

Under Labor Code section 226, subdivision (e), an employee suffering injury as a result of a knowing and intentional failure to provide accurate itemized wage statements is entitled to recover the greater of actual damages or \$50 for the initial pay period in which a violation occurs and \$100 for each violation in a subsequent pay period, up to a maximum of \$4,000.

As a direct and proximate result of Cardenas' conduct, Plaintiffs allege that they and other aggrieved employees have been injured by, among other things, not being paid all wages due and being required to file an action to determine the wages due. Plaintiffs and the other aggrieved employees at the store are entitled to recover the damages and/or penalties provided by Labor Code section 226, subdivision (e), including interest thereon, plus reasonable attorneys' fees and costs.

In addition, pursuant to California Labor Code section 201, if an employer discharges an employee, the wages earned and unpaid at the time of the discharge are due and payable immediately. Pursuant to California Labor Code section 202, if an employee quits his or her employment, the wages earned and unpaid at the time of the discharge are due and payable within seventy-two (72) hours of the resignation.

Plaintiffs allege that aggrieved employees at the store were either terminated by Cardenas or have resigned from their employment with Cardenas. Plaintiffs allege that, in direct violation of California Labor Code

sections 201 and 202, Cardenas has failed to pay compensation and premium wages earned by Plaintiffs and other aggrieved employees at the store who were required to take rest periods.

Plaintiffs allege that Cardenas has willfully refused and continues to refuse to pay Plaintiffs and other Pastry Cashiers and Pastry Clerks at the grocery store all wages earned, including premium wages, in a timely manner, as required by California Labor Code section 203. Plaintiffs claim they and other Pastry Cashiers and Pastry Clerks have been damaged by said violations of California Labor Code sections 203 and therefore request restitution and penalties as provided by California Labor Code section 203.

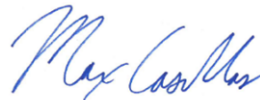
If permitted, Plaintiffs, by and through their well-qualified counsel, intend to seek relief under the Private Attorney General Act ("PAGA") for the actions of Defendant Cardenas for both themselves and other Pastry Cashiers and Pastry Clerks based on the aforementioned violations of the law.

Plaintiffs are represented by the attorneys at Weinberg, Roger and Rosenfeld ("the firm"). The firm is well qualified to pursue this matter. The firm has served as counsel for and appointed to serve as class counsel in numerous meal and rest period class actions. The firm is responsible for leading wage and hour decisions regarding California's wage and hour law including, among other published decisions the seminal, *Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575; *Cicairos v. Summit Logistics, Inc.* (2005) 133 Cal.App.4th 949; and *Bluford v. Safeway Inc.* (2013) 216 Cal.App.4th 864.

If, within the next 65 days, the LWDA or the California Division of Labor Standards Enforcement does not investigate these claims and Cardenas makes no efforts to resolve these claims as outlined in this letter, we will assume that we may pursue a civil action against Cardenas under Labor Code § 2699 for violations discussed above.

Please do not hesitate to contact me with any questions or concerns.

Sincerely,



Maximillian D. Casillas

MDC:fmc

opeiu 29 afl-cio(1)

cc: **VIA CERTIFIED MAIL (7019 2970 0001 1737 5399)**

CSC - Lawyers Incorporating Service

2710 Gateway Oaks Drive

Sacramento, CA 95833

Authorized Agent of Service for Cardenas Markets, LLC

VIA CERTIFIED MAIL (7019 2970 0001 1737 5405)

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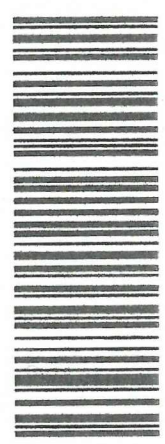
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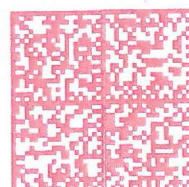
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Subject: Thank you for submission of your PAGA Case.
Sensitivity: Normal
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6/13/2023

LWDA Case No. LWDA-CM-961725-23
Law Firm : Weinberg Roger & Rosenfeld
Plaintiff Name : Rosalba Martinez, Isabel Topete Carapia
Employer: Cardenas Markets, LLC
Filing Fee : \$75.00
IFP Claimed : No

Item submitted: Initial PAGA Notice

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

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

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

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

PAGA NOTICE PUBLIC SEARCH

LWDA #	Plaintiff for PAGA Case	Employer Name	Employer City	Employer Postal Code	Filer/Attorney for PAGA Case	Law Firm for PAGA Plaintiff	Employer Filer	Employer Filer Firm	Court Case #	Submission Date
LWDA-CM-961725-23	Rosalba Martinez, Isabel Topete Carapia	Cardenas Markets, LLC			Maximillian Casillas	Weinberg Roger & Rosenfeld				06/13/23

EXHIBIT A

PAGA NOTICE PUBLIC SEARCH - CASE DETAIL

Case Information

Case Number: LWDA-CM-961725-23
Plaintiff for PAGA Case: Rosalba Martinez, Isabel Topete Carapia
Filer/Attorney for PAGA Case: Maximillian Casillas
Law Firm for PAGA Plaintiff: Weinberg Roger & Rosenfield
Employer: Cardenas Markets, LLC
Date Case Received:
Filer for Employer:
Employer Filer Firm:
Court Type:
Court Name:
PAGA Court Case Number:
Violation Type:
Related BOFE Case:

Attachments

Attachment Name	Description	Date Submitted	Type
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