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MARIN CO. SUPERIOR COURT

BY: N. JOHNSON

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR MARIN COUNTY

ALFREDO ALVARADO, an individual, on
behalf of himself, all aggrieved employees,
and the State of California,

Plaintiff,

v.

BIANCHINI, Inc., dba BIVALVE DAIRY, a
California corporation; KAREN BIANCHINI
TAYLOR, an individual; JOHN WILLIAM
TAYLOR, an individual; and DOES 1-100
INCLUSIVE,

Defendants.

Case No.: CV0001410

**FIRST AMENDED COMPLAINT FOR
PAGA PENALTIES:**

1. PRIVATE ATTORNEYS GENERAL
ACT VIOLATIONS (Labor Code §§
2698 *et seq.*)

DEMAND FOR JURY TRIAL

Complaint Filed: November 21, 2023
Trial Date:

1 Plaintiff ALFREDO ALVARADO, an individual (“Plaintiff”), on behalf of himself, all other
2 aggrieved employees of Defendant BIANCHINI, INC., dba BIVALVE DAIRY, a California
3 corporation; Defendant KAREN BIANCHINI TAYLOR, an individual; Defendant JOHN
4 WILLIAM TAYLOR, an individual; and DOES 1 through 100 (collectively “Defendants”)
5 anywhere in California, and the State of California demanding a jury trial for penalties pursuant to
6 the Private Attorneys General Act for violations of the California Labor Code and Wage Order
7 against Defendants. Plaintiff therefore alleges as follows:

8 **Jurisdiction and Venue**

9 1. This Court has jurisdiction over all causes of action asserted herein pursuant to the
10 California Constitution, Article VI, § 10 and California Code of Civil Procedure § 410.10.

11 2. Venue is proper in that some or all Defendants reside in and conduct significant
12 amounts of business in Marin County, Defendants employed Plaintiff and other employees in Marin
13 County, and a substantial part of the events and omissions giving rise to Plaintiff’s claims and
14 Defendants’ Labor Code violations against Plaintiff and other employees occurred in Marin County.

15 **The Parties**

16 3. Plaintiff Alfredo Alvarado is an individual residing in Marin County, California.
17 Defendants have employed Plaintiff in Marin County from approximately April 2019 to the present.

18 4. Defendant Bianchini, Inc., dba Bivalve Dairy (“Bianchini, Inc.”) is a California
19 corporation located in Marin County that regularly employs employees within Marin County,
20 including Plaintiff. Bianchini, Inc. employed other non-exempt employees in Marin County and
21 elsewhere in California.

22 5. Defendant Karen Bianchini Taylor (“Karen Taylor”) is a natural person who is an
23 owner, director, officer, and/or managing agent of Bianchini, Inc. acting on behalf of Bianchini, Inc.
24 as to Plaintiff and other non-exempt employees throughout California, who violated or caused to be
25 violated, provisions regulating minimum wages or hours and days of work in an order of the
26 Industrial Welfare Commission, and violated or caused to be violated Labor Code sections 203, 226,
27 226.7 and 1194, pursuant to Labor Code section 558.1, and is a manager of Bianchini, Inc. Karen
28

1 Taylor employed Plaintiff and other non-exempt employees in Marin County and elsewhere in
2 California.

3 6. Defendant John William Taylor (“John Taylor”) is a natural person who is an owner,
4 director, officer, and/or managing agent of Bianchini, Inc. acting on behalf of Bianchini, Inc.
5 as to Plaintiff and other non-exempt employees throughout California, who violated or caused to be
6 violated, provisions regulating minimum wages or hours and days of work in an order of the
7 Industrial Welfare Commission, and violated or caused to be violated Labor Code sections 203, 226,
8 226.7 and 1194, pursuant to Labor Code section 558.1, and is a manager of Bianchini, Inc. John
9 Taylor employed Plaintiff and other non-exempt employees in Marin County and elsewhere in
10 California.

11 7. DOES 1 through 100, inclusive, are sued herein under fictitious names. Their true
12 names and capacities are unknown to Plaintiff at this time. When their true names and capacities are
13 ascertained, Plaintiff will amend this Complaint by inserting their true names and capacities herein.
14 Plaintiff is informed and believes, and thereon alleges that each of the fictitiously-named Defendants
15 is responsible in some manner for the occurrences alleged herein, and that Plaintiff’s damages as
16 alleged herein were actually and/or proximately caused by such Defendants.

17 8. Plaintiff is informed and believes and thereon alleges that at all relevant times
18 each Defendant was the principal, agent, employer, owner, manager, managing agent, joint
19 employer, employee, partner, servant, joint venturer, officer, director, controlling shareholder,
20 subsidiary, affiliate, parent corporation, successor in interest and/or predecessor in interest of
21 some or all of the other Defendants, and was engaged with some or all of the other Defendants in
22 a joint enterprise for profit, and bore such other relationships to some or all of the other
23 Defendants so as to be liable for the conduct of them. Plaintiff is also informed and believes that
24 each Defendant solely and/or jointly employed Plaintiff and other non-exempt employees in
25 California pursuant to the California Labor Code and Wage Order No. 14-2001. Plaintiff is also
26 informed and believes and thereon alleges that each Defendant was a sole and/or joint employer
27 and/or other person acting on behalf of an employer, including but not limited to the other
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1 Defendants, who violated, or caused to be violated, a section of Chapter 1 of the Labor Code or
2 any provision regulating hours and days of work in any order of the Industrial Welfare
3 Commission, pursuant to Labor Code section 558. Plaintiff is further informed and believes and
4 thereon alleges that each Defendant was a sole and/or joint employer or an other person acting on
5 behalf of an employer, including but not limited to the other Defendants, who violated, or caused
6 to be violated, any provision regulating minimum wages or hours and days of work in any order
7 of the Industrial Welfare Commission, or violated, or caused to be violated, Labor Code §§ 203,
8 226, or 1194, pursuant to Labor Code § 558.1. Plaintiff is further informed and believes and
9 thereon alleges that each Defendant was a sole and/or joint employer or other person acting
10 either individually or as an officer, agent, or employee of another person, including but not
11 limited to the other Defendants, who paid or caused to be paid to any employee a wage less than
12 the minimum fixed by an applicable state or local law, or by an order of the commission, and
13 who (a) required or caused any employee to work for longer than those fixed, or under
14 conditions of labor prohibited by an order of the commission, (b) paid or caused to be paid to any
15 employee a wage less than the minimum fixed by an order of the commission, and/or (c) violated
16 or refused or neglected to comply with any provision of Chapter 1 of the Labor Code or any
17 order or ruling of the commission, pursuant to Labor Code §§ 1197.1 and 1199. Plaintiff is
18 further informed and believes and thereon alleges that each Defendant acted pursuant to and
19 within the scope of the relationships alleged above, that each Defendant knew or should have
20 known about, authorized, ratified, adopted, approved, controlled, aided and abetted the conduct
21 of all other Defendants, and that each Defendant acted pursuant to an agreement to do the things
22 alleged herein.
23

24 **Defendants Each Solely and Together Jointly Employed Plaintiff and Other**
25 **Non-Exempt Employees in California**

26 9. At all relevant times, Plaintiff and other non-exempt employees were subject to
27 the control, direction and supervision of each Defendant solely and/or two or more Defendants
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1 jointly in connection with Plaintiff's and other non-exempt employees' hours worked, and such
2 hours worked were within the usual course of Defendant's business.

3 10. At all relevant times, each Defendant solely and/or two or more Defendants
4 jointly employed Plaintiff and other non-exempt employees in California by, inter alia,
5 exercising control over their wages, hours, or working conditions, suffering or permitting
6 Plaintiff and other non-exempt employees to work, and/or engaging Plaintiff and other non-
7 exempt employees.

8 11. At all relevant times, each Defendant was a sole and/or joint employer of Plaintiff
9 and other non-exempt employees and/or other person acting on behalf of an employer, including
10 but not limited to the other Defendants, who violated, or caused to be violated, a section of
11 Chapter 1 of the Labor Code or any provision regulating hours and days of work in any order of
12 the Industrial Welfare Commission, pursuant to Labor Code section 558.

13 12. Upon information and belief, Defendants operated individually and in concert and
14 each retained and shared significant control over the terms and conditions of Plaintiff's and other
15 non-exempt employees' employment, including, without limitation, those terms and conditions
16 related to the claims alleged herein.
17

18 **General Allegations**

19 13. From approximately April 2019 to the present, Defendants employed Plaintiff and
20 other non-exempt employees in California, including in Marin County.

21 14. Wage Order No. 14-2001 applies to Defendants' employment of Plaintiff and other
22 non-exempt employees.

23 15. Defendants were Plaintiff's and other non-exempt employees' employers when they
24 worked for them because Defendants "directly or indirectly, or through an agent or any other person,
25 employ[ed] or exercise[d] control over the wages, hours, or working conditions of" Plaintiff and
26 other non-exempt employees. IWC Wage Order No. 14-2001, Sec. 2(F); *Turman v. Superior Court*
27 (2017) 17 Cal.App.5th 969, 982. Defendants also engaged, suffered, or permitted Plaintiff and other
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1 non-exempt employees to work. IWC Wage Order No. 14-2001, Sec. 2(C); *Martinez v. Combs*
2 (2010) 49 Cal.4th 35, 64.

3 16. Pursuant to Labor Code section 558.1, Defendant Karen Taylor and Defendant John
4 Taylor are also liable to Plaintiff and other non-exempt employees for violations of provisions
5 regulating minimum wages and hours and days of work in IWC Wage Order No. 14-2001, and for
6 violations of Labor Code sections 203, 226, 226.7, and 1194, because as Plaintiff's and other non-
7 exempt employees' employers and as natural persons who were an owner, director, officer and/or
8 managing agent of Defendant Bianchini, Inc., Defendant Karen Taylor and Defendant John Taylor
9 were each the "employer or other person acting on behalf of an employer, who violate[d], or
10 cause[d] to be violated" said provisions regulating minimum wages and hours and days of work in
11 IWC Wage Order No. 14-2001 and Labor Code sections 203, 226, 226.7 and 1194.

12 17. During all times relevant to this Complaint, each Defendant solely and/or jointly
13 employed Plaintiff and other non-exempt employees in California, pursuant to the California Labor
14 Code and IWC Wage Order No. 14-2001.

15 18. During all times relevant to this Complaint, each Defendant was a sole and/or joint
16 employer of Plaintiff and other non-exempt employees who violated or caused to be violated,
17 provisions regulating minimum wages or hours and days of work in IWC Wage Order No. 14-2001,
18 and violated or caused to be violated Labor Code sections 203, 226, and 1194. Labor Code § 558.1.

19 19. Throughout Defendants' employment of Plaintiff and other non-exempt employees,
20 Defendants regularly failed to pay them the minimum wage for all hours that Plaintiff and other non-
21 exempt employees worked for Defendants and Defendants regularly failed to pay them overtime
22 wages when they worked overtime hours in a workday or in a workweek. For example, Defendants
23 make improper deductions from the wages of Plaintiff and other non-exempt employees, thereby
24 reducing their wages below the minimum wage and below overtime wages when they work overtime
25 hours. Defendants also have them perform off-the-clock work in addition to the hours for which
26 Defendants pay them. Defendants also pay Plaintiff and other non-exempt employees at an hourly
27 rate that is below the required minimum wage and below the overtime rate of pay when they work
28 overtime hours.

1 20. Throughout Defendants' employment of Plaintiff and other non-exempt employees,
2 Defendants regularly failed to authorize and permit Plaintiff and other non-exempt employees to
3 take an uninterrupted, on-the-clock ten-minute rest period for each work period of 4 hours or major
4 fraction thereof, including within the first three and one-half hours of his workday.

5 21. Throughout Defendants' employment of Plaintiff and other non-exempt employees,
6 Defendants did not pay an extra hour of wages to Plaintiff or other non-exempt employees for the
7 rest periods that Defendants failed to authorize and permit them to take.

8 22. Throughout Defendants' employment of Plaintiff and other non-exempt employees,
9 Defendants knowingly and intentionally failed to provide Plaintiff and other non-exempt employees
10 with accurate itemized wage statements and Plaintiff and other non-exempt employees were injured
11 each pay period by Defendants' knowing and intentional failure to provide them with accurate
12 itemized wage statements.

13 23. At the end of Defendants' employment of other non-exempt employees, Defendants
14 willfully failed to pay all wages due to them.

15 24. Plaintiff alleges that Defendants violated and continue to violate the California Labor
16 Code and Wage Order protections applicable to himself and other non-exempt employees in
17 California, thereby making them Aggrieved Employees under the Private Attorneys General Act,
18 Labor Code section 2698, *et al.* ("PAGA"). Defendants' violations of the California Labor Code and
19 the Wage Order as to Plaintiff and other Aggrieved Employees include:

20 (a) Defendants' failure to pay Plaintiff and other Aggrieved Employees the
21 minimum wage for all hours worked or overtime wages for all overtime hours worked.
22 Defendants thus violated or caused to be violated Labor Code sections 204, 210, 510, 558, 558.1,
23 1194, 1197, 1197.1, 1198, and 1199, and the Wage Order against Plaintiff and other Aggrieved
24 Employees in California during the PAGA statutory period.

25 (b) Defendants' failure to provide Plaintiff and other Aggrieved Employees
26 with wage statements that accurately show their gross wages earned (such as unpaid minimum
27 wage for all hours worked and overtime wages for overtime hours worked), total hours worked
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1 by the employee, net wages earned (such as unpaid minimum wage and overtime wages), and all
2 applicable hourly rates in effect during the pay period and the corresponding number of hours
3 worked at each hourly rate. Defendants failed to keep on file a copy of the records required by
4 Labor Code section 226(a) for at least three years at the place of employment or at a central
5 location in California. Defendants failed to keep, for at least three years, at a central location
6 within the State of California or at the plants or establishments where Plaintiff and other
7 Aggrieved employees are employed, payroll records showing their hours worked daily.
8 Defendants also willfully failed to maintain records showing the hours worked daily by Plaintiff
9 and other Aggrieved Employees. Defendants also failed to keep accurate information with
10 respect to Plaintiff and other Aggrieved Employees, including time records showing when
11 employees began and ended each work period, meal periods, split shift intervals and daily hours
12 worked, total hours worked in the payroll period and applicable rates of pay, and Defendants
13 failed to keep such records on file for at least three years at the place of employment or at a
14 central location within California. Defendants also failed to maintain records of the wages and
15 wage rates of Plaintiff and other Aggrieved Employees in California for a period of three years.
16 Defendants thus violated or caused to be violated Labor Code sections 226(a), 226.3, 558.1,
17 1174(d), 1174.5, 1197.5, and 1199, and the Wage Order against Plaintiff and other Aggrieved
18 Employees in California during the PAGA statutory period.

20 (c) Defendants failed to provide Plaintiff and other Aggrieved Employees
21 with 10-minute rest periods for every four hours that they worked or major fraction thereof.
22 Defendants also failed to pay Plaintiff and other Aggrieved Employees an additional hour of pay
23 at the employee's regular rate of pay for each workday in which Defendants did not provide
24 them with such rest periods. Defendants thus violated or caused to be violated Labor Code
25 sections 226.7 and 558.1, and the Wage Order against Plaintiff and other Aggrieved Employees
26 in California during the PAGA statutory period.

1 (d) Defendants willfully failed to pay other Aggrieved Employees all wages
2 earned and unpaid at the time of discharge or within 72 hours after quitting. Defendants thus
3 violated or caused to be violated Labor Code sections 201, 202, 203, and 558.1 against other
4 Aggrieved Employees in California during the PAGA statutory period.

5 25. Plaintiff brings this action pursuant to PAGA on behalf of himself, all other
6 Aggrieved Employees, and the State of California, for civil penalties for violations of Labor
7 Code §§ 201, 202, 203, 204, 210, 226(a), 226.3, 226.7, 510, 558, 558.1, 1174(d), 1174.5, 1194,
8 1197, 1197.1, 1197.5, 1198, and 1199, and Wage Order No. 14-2001.

9
10 **First Cause of Action**
11 **Private Attorneys General Act Violations**
12 **[Labor Code §§ 2698, *et seq.*]**
13 **(On Behalf of Plaintiff, All Other Aggrieved Employees, and the State of California**
14 **Against All Defendants)**

15 26. Plaintiff realleges and incorporates by reference all other paragraphs as if they
16 were set forth again herein.

17 27. Pursuant to Labor Code § 2699(c), an “aggrieved employee” means any person
18 who was employed by the alleged violator and against whom one or more of the alleged
19 violations was committed.” PAGA provides that any provision of law under the Labor Code that
20 sets forth a civil penalty to be assessed and collected by the Labor and Workforce Development
21 Agency (“LWDA”), may, as an alternative, be recovered through a civil action brought by an
22 aggrieved employee on behalf of herself or herself and other current or former all other
23 aggrieved employees pursuant to the procedures outlined in Labor Code § 2699.3.

24 28. As a result of the California Labor Code violations that Defendants committed
25 against Plaintiff and other current and former Aggrieved Employees of Defendants, Plaintiff and
26 his fellow Aggrieved Employees of Defendants are all “aggrieved employees” of Defendants
27 within the definition of Labor Code § 2699(c). As an aggrieved employee, Plaintiff seeks, on
28 behalf of himself and his fellow Aggrieved Employees and on behalf of the State of California,
to recover civil penalties from Defendants under Labor Code §§ 2699, 210, 226.3, 558, 1174.5,

1 and 1197.1, and Wage Order No. 14-2001, § 18 for Defendants' Labor Code violations set forth
2 above, including Defendants' violations of Labor Code §§ 201, 202, 203, 204, 210, 226(a),
3 226.3, 226.7, 510, 558, 558.1, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.5, 1198, and 1199, and
4 Wage Order No. 14-2001.

5 29. Pursuant to Labor Code § 2699.3, an aggrieved employee may commence a civil
6 action arising under Labor Code § 2699 after the following requirements have been met:

- 7 a. The aggrieved employee or representative shall give written notice by filing online
8 with the LWDA and by certified mail to the employer of the specific provisions of the
9 Labor Code alleged to have been violated, including the facts and theories to support
10 the alleged violation. A \$75 filing fee should accompany the notice.
- 11 b. For violations of any provision listed in Labor Code § 2699.5, the LWDA shall notify
12 the employer and the aggrieved employee or representative by certified mail that it
13 does not intend to investigate the alleged violation within 60 calendar days of the
14 postmark date of the notice received. Upon receipt of that notice or if no notice is
15 provided within 65 calendar days of the postmark date of the notice, the aggrieved
16 employee may commence a civil action pursuant to Section 2699. For violations of
17 any provision other than those listed in Labor Code § 2699.5 or Division 5, the
18 aggrieved employee may commence a civil action pursuant to Section 2699 if the
19 employer has not cured the violations within 33 calendar days of the postmark date of
20 the notice.

21 30. On or about September 9, 2023, Plaintiff gave timely written notice by certified
22 mail to Defendants of Defendants' violations of Labor Code §§ 201, 202, 203, 204, 210, 226(a),
23 226.3, 226.7, 510, 558, 558.1, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.5, 1198, and 1199, and
24 Wage Order No. 14-2001 alleged in this Complaint, including the facts and theories to support
25 the alleged violations, and Plaintiff filed the notice online with the LWDA. Plaintiff also paid
26 the accompanying filing fee of \$75.00. Plaintiff has complied with all notice and exhaustion
27 procedures as required by PAGA.
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1 31. The LWDA did not provide notice of its intention to investigate Defendants'
2 violations of provisions listed in Labor Code § 2699.5 by the expiration of the 65-day waiting
3 time period. Defendants have not cured the violations of provisions other than those listed in
4 Labor Code § 2699.5 or Division 5 by the expiration of the 33-day period. Consequently,
5 Plaintiff's right to file the instant lawsuit then duly accrued.

6 32. Therefore, Plaintiff has complied with all of the requirements set forth in Labor
7 Code § 2699.3 to commence a representative action under PAGA.

8 33. Plaintiff, on behalf of himself, his fellow Aggrieved Employees, and on behalf of
9 the State of California, seeks civil penalties under PAGA, 75% of which will be distributed to the
10 State of California, and 25% of which will be distributed to Plaintiff and his fellow Aggrieved
11 Employees. Under this PAGA action, Plaintiff is also entitled to an award of reasonable
12 attorney's fees and costs.

13 34. Pursuant to Labor Code § 2699, Plaintiff is entitled to recover civil penalties in the
14 amount of one hundred dollars (\$100) for each aggrieved employee per pay period for the initial
15 violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each
16 subsequent violation or the civil penalties and remedies specifically provided by statutes or the Wage
17 Order, for Defendants' violations of Labor Code §§ 201, 202, 203, 204, 210, 226(a), 226.3, 226.7,
18 510, 558, 558.1, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.5, 1198, and 1199, and Wage Order No.
19 14-2001, § 18, plus reasonable attorney's fees and costs.

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21 **Prayer for Relief**

22 WHEREFORE, Plaintiff requests judgment against Defendants as follows according
23 to proof:

- 24 A. Civil penalties pursuant to Labor Code § 2699;
25 B. Attorney's fees and costs of suit pursuant to Labor Code § 2699; and
26 C. An appropriate service payment to Plaintiff for his service as PAGA
27 representative.

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1 Dated: November 21, 2023

LAW OFFICE OF STEVEN ELSTER

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5 Steven Elster
6 Attorney for Plaintiff Alfredo Alvarado
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