

1 D. LUKE CLAPP, SBN 306040
luke@protectionlawgroup.com
2 ARNELO. TAN, SBN 272428
arnel@protectionlawgroup.com
3 JOSEPH MARSHALL, SBN 354066
joe@protectionlawgroup.com
4 **PROTECTION LAW GROUP, LLP**
149 Sheldon Street
5 El Segundo, California 90245
Telephone: (424) 290-3095
6 Facsimile: (866) 264-7880

7 Attorneys for Plaintiff
MONICA LEYTTTE

Electronically FILED by
Superior Court of California,
County of Los Angeles
9/16/2024 11:04 AM
David W. Slayton,
Executive Officer/Clerk of Court,
By G. Carini, Deputy Clerk

8
9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

10 **COUNTY OF LOS ANGELES**

11 STATE OF CALIFORNIA *ex rel.* MONICA
LEYTTTE as Private Attorney General,

12 Plaintiff,

13 vs.

14 PORTO'S BAKERY, INC., a California
15 corporation; PORTO'S BAKERY WEST
COVINA, INC., a California corporation;
16 and DOES 1 through 50, inclusive,

17 Defendants.

Case No.: **24STCV23896**

**REPRESENTATIVE ACTION
COMPLAINT**

DEMAND FOR TRIAL BY JURY

**(1) Violation of Cal. Labor Code § 2699,
(Private Attorneys General Act)**

1 Plaintiff STATE OF CALIFORNIA *ex. rel.* MONICA LEYTTE as a Private Attorney
2 General (“Plaintiff”), upon facts that either have evidentiary support or are likely to have
3 evidentiary support after a reasonable opportunity for further investigation and discovery, alleges
4 as follows:

5 **JURISDICTION AND VENUE**

6 1. Plaintiff brings this action against Defendants PORTO’S BAKERY, INC.,
7 PORTO’S BAKERY WEST COVINA, INC., and DOES 1 THROUGH 50 (hereinafter also
8 collectively referred to as “Defendants”) for California Labor Code violations, unfair business
9 practices, and civil penalties stemming from Defendants’ failure to pay overtime compensation,
10 failure to provide meal periods, failure to authorize and permit rest periods, failure to pay
11 minimum wage, failure to timely pay wages, failure to provide accurate wage statements, failure
12 to maintain accurate time and payroll records, failure to reimburse necessary business-related
13 expenses, and failure to provide suitable seating.

14 2. Plaintiff brings this action solely as a representative action, and solely as a Private
15 Attorney General, on behalf of the State of California for all aggrieved employees of Defendants
16 against whom one or more of the alleged violations were committed (hereinafter collectively the
17 “Aggrieved Employees”) pursuant to California Labor Code sections 2698, *et seq*; *Balderas v.*
18 *Fresh Start Harvesting, Inc.* (Cal. Ct. App., Mar. 20, 2024, No. 2D CRIM. B326759) 2024 WL
19 1673112, as modified (April 18, 2024); and *Johnson v. Maxim Healthcare Services, Inc.*, 66
20 Cal.App.5th 924 (2021). Plaintiff is an aggrieved employee against whom one or more of the
21 alleged violations occurred. The civil penalties sought by Plaintiff exceed the minimal jurisdiction
22 limits of the Superior Court and will be established according to proof at trial.

23 3. The Court has jurisdiction over this action pursuant to the California Constitution,
24 Article VI, Section 10, which grants the superior court “original jurisdiction in all other causes”
25 except those given by statute to other courts. The statutes under which this action is brought do
26 not specify any other basis for jurisdiction.

27 4. This Court has jurisdiction over Defendants because, upon information and belief,
28

1 Defendants are citizens of California, have sufficient minimum contacts in California, or
2 otherwise intentionally avail themselves of the California market so as to render the exercise of
3 jurisdiction over them by the California courts consistent with traditional notions of fair play and
4 substantial justice.

5 5. Venue is proper in this Court because, upon information and belief, Defendants
6 maintain offices, have agents, and/or transact business in the State of California, County of Los
7 Angeles.

8 **PARTIES**

9 6. MONICA LEYTTE is an individual residing in the County of Los Angeles, State
10 of California. Ms. Leytte is not suing in her individual capacity; she is proceeding herein solely
11 under the PAGA, on behalf of the State of California for all aggrieved employees, including
12 herself and other aggrieved employees.

13 7. Defendant PORTO'S BAKERY, INC., is and at all times herein mentioned was,
14 a corporation organized and existing under the laws of the State of California and registered to do
15 business in the state of California.

16 8. Defendant PORTO'S BAKERY WEST COVINA, INC., is and at all times herein
17 mentioned was, a corporation organized and existing under the laws of the State of California and
18 registered to do business in the state of California.

19 9. Plaintiff is ignorant of the identities of defendants Does 1 through 50, inclusive,
20 and therefore sues these defendants by such fictitious names. The Doe defendants may be
21 individuals, partnerships, or corporations. Plaintiff is informed and believes, and thereon alleges,
22 that, at all times mentioned herein, each of the Doe defendants was the parent, subsidiary, agent,
23 servant, employee, co-venturer, and/or co-conspirator of each of the other defendants, and was at
24 all times mentioned acting within the scope, purpose, consent, knowledge, ratification and
25 authorization of such agency, employment, joint venture and conspiracy. Plaintiff will amend this
26 Complaint to allege their true names and capacities when ascertained. Plaintiff is informed and
27 believes and thereon alleges that each of the fictitiously named Doe defendants is responsible in
28

1 some manner for the occurrences herein alleged, and that the damages as herein alleged were
2 proximately caused by its conduct. PORTO’S BAKERY, INC., PORTO’S BAKERY WEST
3 COVINA, INC., and Doe Defendants 1 through 50 are collectively referred to herein as
4 “Defendants.”

5 10. Defendants are and at all times herein mentioned were, (a) conducting business in
6 the County of Los Angeles, State of California, and (b) the employer of Ms. Leytte and the
7 Aggrieved Employees consistent with the California Labor Code and Industrial Welfare
8 Commission Wage Orders (“Wage Orders”).

9 11. Plaintiff further alleges that Defendants, directly or indirectly controlled or
10 affected the working conditions, wages, working hours, and conditions of employment of Ms.
11 Leytte and the Aggrieved Employees so as to make each of said Defendants employers and
12 employers jointly liable under the statutory provisions set forth herein.

13 **GENERAL ALLEGATIONS**

14 12. Defendant PORTO’S BAKERY, INC. is a retail bakery cafe.

15 13. Defendant PORTO’S BAKERY WEST COVINA, INC. is a retail bakery cafe.

16 14. Defendants have employed Ms. Leytte to work as a cashier and customer service
17 representative from approximately July 5, 2022, to the present.

18 15. At all relevant times set forth herein, Defendants employed Ms. Leytte and the
19 Aggrieved Employees as hourly-paid or non-exempt employees.

20 16. Throughout the time period involved in this case, Defendants had the authority to
21 hire and terminate Ms. Leytte and the Aggrieved Employees and to directly or indirectly control
22 work rules, working conditions, wages, working hours, and conditions of employment of Ms.
23 Leytte and the Aggrieved Employees.

24 17. At all times herein mentioned, Defendants were subject to the Labor Code of the
25 State of California and the applicable Industrial Welfare Commission Orders.

26 18. Plaintiff is informed and believes, and thereon alleges that Defendants engaged in
27 an ongoing and systematic scheme of wage abuse against their hourly-paid or non-exempt
28

employees. As set forth in more detail below, this scheme involved, *inter alia*, regularly requiring Ms. Leytte and the Aggrieved Employees to work off the clock without compensation, thereby failing to pay them for all hours worked, including minimum and overtime wages. Defendants also implemented policies that prohibited Ms. Leytte and the Aggrieved Employees from accurately recording the actual time worked, resulting in a failure to pay Ms. Leytte and the Aggrieved Employees all wages owed. In addition, Defendants routinely failed to permit Ms. Leytte and the Aggrieved Employees to take timely and duty-free meal periods and rest periods in violation of California law. Defendants also failed to reimburse Ms. Leytte and the Aggrieved Employees for all necessary business-related expenses and failed to provide suitable seating.

19. Throughout the time period involved in this case, Defendants have implemented policies and practices which failed to provide Ms. Leytte and the Aggrieved Employees with timely and duty-free meal periods. Defendants routinely failed to relieve Ms. Leytte and the Aggrieved Employees of all duties during their meal periods, regularly failed to relinquish control over Ms. Leytte and the Aggrieved Employees during their meal periods, regularly failed to permit Ms. Leytte and the Aggrieved Employees a reasonable opportunity to take their meal periods, and regularly impeded or discouraged Ms. Leytte and the Aggrieved Employees from taking thirty (30) minute uninterrupted meal breaks no later than the end of their fifth hour of work and/or from taking a second thirty (30) minute uninterrupted meal break no later than their tenth hour of work for shifts lasting more than ten (10) hours. Defendants also failed to maintain accurate records of meal periods taken by Ms. Leytte and the Aggrieved Employees.

20. Throughout the time period involved in this case, Defendants did not adequately inform Ms. Leytte and the Aggrieved Employees of their right to take meal periods under California law. Moreover, Defendants systematically disregarded their own written policies regarding the provision and timing of meal periods for Ms. Leytte and the Aggrieved Employees. Instead, Defendants' actual policy and practice was to schedule Ms. Leytte and the Aggrieved Employees in a way that prohibited them from taking timely and duty-free meal periods, and to require Ms. Leytte and the Aggrieved Employees to work through their meal periods, for which

1 they were not compensated.

2 21. Throughout the time period involved in this case, Defendants failed to pay Ms.
3 Leytte and the Aggrieved Employees premium wages for meal periods that were missed, late,
4 interrupted, or shortened in violation of California law. Defendants knew or should have known
5 that Ms. Leytte and the Aggrieved Employees were entitled to receive all meal periods or payment
6 of one additional hour of pay at their regular rate of pay when a meal period was missed, short,
7 late, and/or interrupted. Notwithstanding this knowledge, Defendants routinely failed to provide
8 legally compliant meal periods to Ms. Leytte and the Aggrieved Employees, and routinely failed
9 to pay one additional hour of pay to Ms. Leytte and the Aggrieved Employees at their regular rate
10 of pay when a meal period was missed, short, late, and/or interrupted.

11 22. Throughout the time period involved in this case, Defendants have implemented
12 policies and practices which prohibited Ms. Leytte and the Aggrieved Employees from taking
13 timely and duty-free rest periods. Defendants regularly failed to provide, authorize, and permit
14 Ms. Leytte and the Aggrieved Employees to take full, uninterrupted, off-duty rest periods for
15 every shift lasting three and one-half (3.5) to six (6) hours and/or two full, uninterrupted, off-duty
16 rest periods for every shift lasting six (6) to ten (10) hours, and failed to make a good faith effort
17 to authorize, permit, and provide such rest breaks in the middle of each work period.

18 23. Throughout the time period involved in this case, Defendants did not adequately
19 inform Ms. Leytte and the Aggrieved Employees of their right to take rest periods under
20 California law. Moreover, Defendants systematically disregarded their own written policies
21 regarding the provision and timing of rest periods for Ms. Leytte and the Aggrieved Employees.
22 Instead, Defendants' actual policy and practice was to schedule Ms. Leytte and the Aggrieved
23 Employees in a way that regularly prohibited them from taking timely and duty free rest periods,
24 and regularly required Ms. Leytte and the Aggrieved Employees to work through their rest breaks.

25 24. Throughout the time period involved in this case, Defendants failed to pay Ms.
26 Leytte and the Aggrieved Employees premium wages for rest periods that were missed, late,
27 interrupted, or shortened in violation of California law. Defendants knew or should have known
28

1 that Ms. Leytte and the Aggrieved Employees were entitled to receive all rest periods or payment
2 of one additional hour of pay at their regular rate of pay when a rest period was missed, short,
3 late, and/or interrupted. Notwithstanding this knowledge, Defendants routinely failed to authorize
4 and permit Ms. Leytte and the Aggrieved Employees to take duty-free rest periods and failed to
5 pay one additional hour of pay to Ms. Leytte and the Aggrieved Employees at their regular rate
6 of pay when a rest period was missed, short, late and/or interrupted.

7 25. Throughout the time period involved in this case, Defendants regularly required
8 Ms. Leytte and the Aggrieved Employees to perform work off the clock. Although Defendants
9 prohibited overtime, Defendants still regularly required that Ms. Leytte and the Aggrieved
10 Employees complete all of their assigned duties. To do so, Ms. Leytte and the Aggrieved
11 Employees were regularly required to perform work off the clock for which they were not
12 compensated.

13 26. Throughout the time period involved in this case, Defendants implemented policies
14 that prohibited Ms. Leytte and the Aggrieved Employees from accurately recording the actual time
15 worked, resulting in a failure to pay Ms. Leytte and the Aggrieved Employees all wages owed.

16 27. Throughout the time period involved in this case, Ms. Leytte and the Aggrieved
17 Employees worked more than eight (8) hours in a day, and/or forty (40) hours in a week.

18 28. Throughout the time period involved in this case, Defendants regularly failed to
19 pay all overtime compensation owed to Ms. Leytte and the Aggrieved Employees when they
20 worked in excess of eight (8) hours in a single work day and/or forty (40) hours in a single work
21 week, or in excess of twelve (12) hours in a single work day and/or eighty (80) hours in a single
22 work week. Defendants knew or should have known that Ms. Leytte and the Aggrieved
23 Employees were entitled to receive certain wages for overtime compensation and that they were
24 not receiving wages for overtime compensation.

25 29. Throughout the time period involved in this case, Defendants failed to pay
26 overtime to Ms. Leytte and the Aggrieved Employees for all overtime hours worked based on
27 regular rates of pay correctly calculated to include all applicable remuneration.
28

1 30. Throughout the time period involved in this case, Defendants regularly failed to
2 pay Ms. Leytte and the Aggrieved Employees at least minimum wages for all hours worked.
3 Defendants knew or should have known that Ms. Leytte and the Aggrieved Employees were
4 entitled to receive at least minimum wages for all hours worked and that they were not receiving
5 at least minimum wages for all hours worked. Defendants' failure to pay minimum wages
6 included, *inter alia*, failing to pay Ms. Leytte and the Aggrieved Employees at the required
7 minimum wage pursuant to California law, requiring Ms. Leytte and the Aggrieved Employees
8 to perform work off the clock.

9 31. Throughout the time period involved in this case, Defendants regularly failed to
10 pay Ms. Leytte and the Aggrieved Employees all wages within any time permissible under
11 California law, including, *inter alia*, California Labor Code section 204. Defendants knew or
12 should have known that Ms. Leytte and the Aggrieved Employees were entitled to receive all
13 wages owed to them during their employment. Ms. Leytte and the Aggrieved Employees did not
14 receive payment of all wages, including overtime compensation, minimum wages, and meal and
15 rest period premiums.

16 32. Throughout the time period involved in this case, Defendants regularly failed to
17 provide complete or accurate wage statements to Ms. Leytte and the Aggrieved Employees.
18 Defendants knew or should have known that Ms. Leytte and the Aggrieved Employees were
19 entitled to receive complete and accurate wage statements in accordance with California law, but,
20 in fact, they did not receive complete and accurate wage statements from Defendants. The
21 deficiencies included, *inter alia*, the failure to include the total number of hours worked, the actual
22 gross wages earned, the correct rates of pay, net wages earned, all applicable hourly rates, and all
23 applicable compensation.

24 33. Throughout the time period involved in this case, Defendants regularly failed to
25 keep complete or accurate payroll records for Ms. Leytte and the Aggrieved Employees.
26 Defendants knew or should have known that Defendants were required to keep complete and
27 accurate payroll records for Ms. Leytte and the Aggrieved Employees in accordance with
28

1 California law, but, in fact, did not keep complete and accurate payroll records.

2 34. Throughout the time period involved in this case, Defendants regularly failed to
3 maintain accurate records relating to Ms. Leytte's and the Aggrieved Employees' work periods,
4 meal periods, total daily hours, hours per pay period, and applicable pay rates.

5 35. Throughout the time period involved in this case, Defendants failed to reimburse
6 Ms. Leytte and the Aggrieved Employees for all necessary business-related expenses, including
7 but not limited to aprons, hats, and uniform shirts. Defendants knew or should have known that
8 Defendants were required to reimburse Ms. Leytte and the Aggrieved Employees for all necessary
9 business-related expenses and costs, but, in fact, failed to do so in violation of California law.

10 36. Throughout the time period involved in this case, Defendants failed to provide Ms.
11 Leytte and the Aggrieved Employees with suitable seating, despite the fact that the nature of their
12 work reasonably permitted the use of seats.

13 37. Throughout the time period involved in this case, Defendants knew or should have
14 known that they had a duty to compensate Ms. Leytte and the Aggrieved Employees pursuant to
15 California law. Defendants had the ability to pay such compensation, but willfully, knowingly,
16 and intentionally failed to do so, and falsely represented to Ms. Leytte and the Aggrieved
17 Employees that they paid all wages owed to them, in order to increase Defendants' profits.

18 38. California Labor Code section 218 states that nothing in Article 1 of the Labor
19 Code shall limit the right of any wage claimant to "sue directly ... for any wages or penalty due
20 to him [or her] under this article."

21 **FIRST CAUSE OF ACTION**
22 **(Violation of California Labor Code § 2699, *et seq.*)**
23 **(Against All Defendants)**

24 39. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and
25 every allegation set forth above.

26 40. Plaintiff brings the first cause of action solely as a representative action pursuant
27 to the Private Attorneys General Act of 2004, California Labor Code section 2698, *et seq.*
28

1 (“PAGA”), on behalf of the State of California for all aggrieved employees, including herself and
2 other aggrieved employees of Defendants against whom one or more of the alleged violations
3 was committed.

4 41. PAGA specifically provides for a private right of action to recover civil penalties
5 for violations of the Labor Code as follows: “Notwithstanding any other provision of law, any
6 provision of this code that provides for a civil penalty to be assessed and collected by the Labor
7 and Workforce Development Agency or any of its departments, divisions, commissions, boards,
8 agencies, or employees, for a violation of this code, may, as an alternative, be recovered through
9 a civil action brought by an aggrieved employee on behalf of himself or herself and other current
10 or former employees pursuant to the procedures specified in Section 2699.3.” Cal. Lab. Code §
11 2699(a).

12 42. Ms. Leytte was employed by Defendants and the Labor Code violations alleged
13 above were committed against her during her time of employment and is therefore, an “Aggrieved
14 Employee” under PAGA.

15 43. As set forth in detail above, during all times relevant to this Action, Defendants
16 have routinely subjected Ms. Leytte and the Aggrieved Employees to violations of California
17 Labor Codes by:

- 18 a. Failing to pay the Aggrieved Employees all earned minimum wage compensation
19 in violation of Labor Code §§ 1194 and 1198 *et seq.*
- 20 b. Failing to pay the Aggrieved Employees all earned overtime compensation in
21 violation of Labor Code §§ 204, 510, 1194, and 1198 *et seq.*
- 22 c. Failing to provide legally required meal periods to the Aggrieved Employees, and
23 failing to pay the Aggrieved Employees an additional hour of premium pay for
24 meal period violations in violation of Labor Code §§ 226.7 and 512.
- 25 d. Failing to provide authorize and permit the Aggrieved Employees to take duty-
26 free rest periods, and failed to pay the Aggrieved Employees premium pay for rest
27 period violations in violation of Labor Code §§ 226.7 and 512.

- e. Failing to timely pay the Aggrieved Employees all wages owed during employment in violation of Labor Code § 204.
- f. Failing to furnish the Aggrieved Employees with complete, accurate, itemized wage statements in violation of Labor Code § 226.
- g. Failing to maintain accurate records relating to the Aggrieved Employees' work periods, meal periods, total daily hours, hours per pay period, total wages and compensation, and applicable pay rates in violation of Labor Code § 1174(d) and the applicable IWC Wage Order.
- h. Failing to reimburse the Aggrieved Employees for necessary business-related expenses in violation of Labor Code §§ 2800 and 2802.
- i. Failing to provide the Aggrieved Employees with suitable seating in violation of Labor Code § 1198 and the applicable IWC Wage Order.

44. Pursuant to California Labor Code sections 2699 and 2699.5, Plaintiff requests and is entitled to recover penalties against Defendants for the Labor Code violations described above, including but not limited to penalties under California Code of Regulations Title 8 section 11050, penalties under California Labor Code sections 2699, 558, 210, 1197.1, 225.5, 226, 226.3 and 1174.5, and 1197.1, and any and all additional penalties and sums as provided by the California Labor Code and/or other statutes. The exact amount of the applicable penalties, in all, is in an amount to be shown according to proof at trial.

45. Ms. Leytte has exhausted her administrative remedies pursuant to Labor Code § 2699.3. On July 10, 2024, Ms. Leytte, through her counsel of record, by online filing with the Labor and Workforce Development Agency ("LWDA") and by certified mail to the Defendants, notified Defendants and the LWDA of the specific provisions of the Labor Code and IWC Wage Orders that Defendants have violated, including the facts and theories to support the violations, and intent to bring a claim for civil penalties under PAGA. Ms. Leytte also paid the filing fee required under Labor Code § 2699.3. As of the filing of this Complaint, more than sixty-five (65) days have elapsed since the mailing of the July 10, 2024 notice, and the Labor and Workforce

Development Agency has not indicated that it intends to investigate the violations discussed in the notice. Accordingly, Ms. Leytte may commence this representative action on behalf of the state to recover penalties pursuant to Labor Code § 2699.3.

46. Plaintiff was compelled to retain the services of counsel to file this court action to assess and collect the civil penalties owed by Defendants. Plaintiff therefore seeks an award of reasonable attorneys' fees and costs pursuant to Labor Code § 2699(g)(1), and any other applicable statute.

47. Plaintiff may amend this complaint as a matter of right pursuant to California Labor Code § 2699.3 as this complaint has been filed within sixty days of the time periods specified in Labor Code §2699.3.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for relief and judgment against Defendants, jointly and severally, as follows:

As to the First Cause of Action

1. For statutory attorneys' fees and costs pursuant to 2699(g)(1) of California Labor Code;

2. For the imposition of civil penalties pursuant to California Labor Code §§ 2699, 210, 558, 226, 226.3, 1174.5, 1197.1, and all other penalties allowed by the California Labor Code and/or other applicable statutes; and

3. For such other relief as the Court deems just and proper.

Dated: September 16, 2024

PROTECTION LAW GROUP, LLP

By: _____

D. Luke Clapp
Arnel O. Tan
Joseph Marshall
Attorneys for Plaintiff

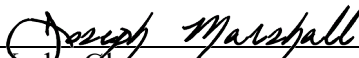
1
2
3
4
5
6
7
8
9
10
11 **DEMAND FOR TRIAL BY JURY**

12 Plaintiff demands a trial by jury as to all causes of action triable by a jury.

13
14 Dated: September 16, 2024

PROTECTION LAW GROUP, LLP

15
16 By:



D. Luke Clapp

Arnel O. Tan

Joseph Marshall

Attorneys for Plaintiff

17
18
19
20
21
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28