

Nazo Koulloukian, SBN 263809
 nazo@koullaw.com
 KOUL LAW FIRM
 3435 Wilshire Blvd., Suite 1710
 Los Angeles, CA 90010
 Telephone: (213) 761-5484
 Facsimile: (818) 561-3938

Garen Majarian, Esq. SBN 334104
 garen@majarianlawgroup.com
 MAJARIAN LAW GROUP, APC
 18250 Ventura Blvd.
 Tarzana, CA 91356
 Telephone: (818) 609-0807
 Facsimile: (818) 609-0892

Attorneys for Plaintiffs,
 GENESIS GONZALEZ and GERRY SIEMON on
 behalf of themselves, all aggrieved employees, and the State
 of California as Private Attorneys General

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
 COUNTY OF LOS ANGELES**

GENESIS GONZALEZ and GERRY
 SIEMON, individuals, on behalf of themselves,
 all aggrieved employees, and the State of
 California as Private Attorneys General,

Plaintiff,

vs.

MRS. GOOCH'S NATURAL FOOD
 MARKETS, INC., a California Corporation,
 and DOES 1-50, inclusive,

Defendants.

) Case No.: 22STCV00610

) **FIRST AMENDED PAGA
 REPRESENTATIVE ACTION
 COMPLAINT**

) **Violation of the Private Attorneys General
 Act of 2004, Cal. Labor Code §2698 *et seq.***

) Complaint Filed: January 6, 2022

FILED

Superior Court of California
 County of Los Angeles

02/01/2022

Sherri R. Carter, Executive Officer / Clerk of Court

By: S. Trasvaml Deputy

1 Plaintiff GENESIS GONZALEZ and GERRY SIEMON (collectively "Plaintiffs") bring
2 this First Amended PAGA Representative Action Complaint on behalf of themselves, all aggrieved
3 employees, and the State of California as a Private Attorneys General, and alleges as follows:

4 **NATURE OF THE ACTION**

5 1. Plaintiff GENESIS GONZALEZ worked for Defendants MRS. GOOCH'S NATURAL
6 FOOD MARKETS, INC. and Does 1-50 (collectively "Defendants") until July 9, 2021. Plaintiff
7 GERRY SIEMON worked for Defendants until July 21, 2021. Plaintiffs bring this action pursuant
8 to the Private Attorneys General Act of 2004 ("PAGA"), Cal. Labor Code §2698 *et seq.*, on a
9 representative basis. All current and former non-exempt employees of Defendants in California
10 within one year of serving notice on the LWDA on October 26, 2021, to the present are aggrieved
11 employees.

12 2. Defendants failed to comply with California Labor Code requirements due to erroneous,
13 willful, and intentional employment practices and policies. Plaintiffs bring this representative
14 action on behalf of herself, all others similarly situated aggrieved employees, and the State of
15 California, based upon the claims articulated below. Plaintiff provided notice of the claims
16 pursuant to §2698 *et seq.*, to the Labor and Workforce Development Agency ("LWDA"), as
17 illustrated by the attached Exhibit. The LWDA has not provided any notice to Plaintiffs following
18 the exhaustion of the 65-day notice period required by 2699.3(a)(2)(B). Plaintiffs now bring this
19 First Amended Complaint for civil penalties under the Private Attorneys General Act ("PAGA"),
20 Labor Code §2698 *et seq.*

21 3. Defendants have had a consistent policy and/or practice of: (1) failure to provide and
22 pay sick pay at the lawful rate of pay; (2) failing to provide place of employment that is safe and
23 healthful; (3) failing to timely pay all wages owed. Defendants are therefore liable for civil
24 penalties under the Cal. Labor Code, including the Private Attorney General Act ("PAGA"), Labor
25 Code §2698 *et seq.*, as described more fully herein.

26 ///

27 ///

28 ///

///

1 **THE PARTIES**

2 4. Plaintiff GENESIS GONZALEZ is a resident of the State of California and was
3 employed as an hourly, nonexempt employee of Defendants until July 9, 2021.

4 5. Plaintiff GERRY SIEMON is a resident of the State of California and was employed as
5 an hourly, nonexempt employee of Defendants until July 21, 2021.

6 6. Defendant MRS. GOOCH'S NATURAL FOOD MARKETS, INC., is a California
7 Corporation registered to do business and doing business in California with the capacity to sue and
8 to be sued, and doing business in the county of Los Angeles, California.

9 7. Plaintiffs are unaware of the true names, capacities, relationships, and extent of
10 participation in the conduct alleged herein, of the Defendants sued as DOES 1 through 50, but is
11 informed and believes and thereon alleges that said Defendants are legally responsible for the
12 wrongful conduct alleged herein and therefore sues these Defendants by such fictitious names,
13 Plaintiffs will amend this complaint when their true names and capabilities are ascertained.

14 8. Plaintiffs are informed and believes and thereon alleges that each Defendant, directly or
15 indirectly, or through agents or other persons, employed Plaintiff and other aggrieved employees
16 of the representative class, and exercised control over their wages, hours, and working conditions.
17 Plaintiffs are informed and believes and thereon allege that each Defendant acted in all respects
18 pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business
19 plan or policy in all respects pertinent hereto, and the acts of each Defendants are legally
20 attributable to the other Defendants.

21 **JURISDICTION AND VENUE**

22 9. Venue is proper in this judicial district because Defendants conduct business in this
23 county, and each defendant has legal obligations to Plaintiffs and many of the aggrieved employees
24 in this case that arose in this county.

25 10. The statutory penalties sought by Plaintiffs exceed the minimum jurisdictional limits
26 of the Superior Court and will be established according to proof at trial. Based on information,
27 investigation, and analysis, Plaintiffs allege that the amount in controversy, including claims for
28

monetary damages, penalties, and attorney's fees, is more than twenty-five thousand dollars (\$25,000).

11. The California Superior Court has jurisdiction in this matter because each Plaintiff is a resident of California, and Defendants are incorporated in and/or qualified to do business in California and regularly conduct business in California. Further, there is no federal question at issue as the claims herein are based solely on California law.

PAGA REPRESENTATIVE ACTION ALLEGATIONS

12. During the relevant period, Defendants committed various violations of the California Labor Code as alleged below in more detail. Defendants enforce multiple policies that violate state law, which is intended to increase profits to the detriment of aggrieved employees.

13. Each Plaintiff is an aggrieved employee of Defendants, having worked for Defendants in Defendants' grocery stores.

14. For at least one (1) year prior to the date of service notice on the LWDA, and continuing to the present, Defendants engaged in unlawful employment practices that resulted in violations of numerous Labor Code sections, as set forth more fully below.

15. Plaintiffs and all current and former hourly, non-exempt employees in California within one year of serving notice on the LWDA to the present are aggrieved employees within the meaning of Labor Code 2699, *et seq.* (See Labor code §2699(c).)

16. Defendants, and each of them, have committed the following violations of the California Labor Code:

Failure to Properly Calculate and Pay Sick Leave Wages

(Cal. Labor Code §246)

17. Pursuant to Labor Code §246, employers must calculate paid sick leave for non-exempt employees in one of two ways:

- a. Paid sick time for nonexempt employees shall be calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek; [or]

1 b. Paid sick time for nonexempt employees shall be calculated by dividing the
2 employee's total wages, not including overtime premium pay, by the employee's
3 total hours worked in the full pay periods of the prior 90 days of employment.

4 18. Plaintiffs and aggrieved employees were paid sick leave wages at their base hourly
5 rates of pay, which is less than required under either of the two alternative methods of calculation
6 provided by Labor Code section 246.

7 19. By failing to pay Plaintiffs and aggrieved employees for sick pay at the correct rate,
8 Defendants violated Labor Code §246.

9 **Failure to Provide Place of Employment That Is Safe and Healthful**

10 (Cal. Labor Code §§6400, 6401, 6402, 6403, 6404, 6407, 2699 *et seq.*, 8 CCR 3202)

11 20. Plaintiffs reassert and reallege all preceding paragraphs as if fully set forth and
12 incorporate said paragraphs herein by reference.

13 21. Cal. Labor Code § 6400(a) provides that every employer shall furnish employment and
14 a place of employment that is safe and healthful for the employees therein. Cal. Labor Code §6401
15 provides that “every employer shall furnish and use safety devices and safeguards, and shall adopt
16 and use practices, means, methods, operations, and processes which are reasonably adequate to
17 render such employment and place of employment safe and healthful. Pursuant to Cal. Labor Code
18 §6402, no employer shall require, or permit any employee to go or be in any employment or place
19 of employment which is not safe and healthful. Cal. Labor Code §6403 states that no employer
20 shall fail or neglect to provide and use safety devices and safeguards reasonably adequate to render
21 the employment and place of employment safe, or to adopt and use methods and processes
22 reasonably adequate to render the employment and place of employment safe, or to do every other
23 thing reasonably necessary to protect the life, safety, and health of employees. Cal. Labor Code §
24 6404 provides that no employer shall occupy or maintain any place of employment that is not safe
25 and healthful. Cal. Labor Code § 6407 provides that every employer and every employee shall
26 comply with occupational safety and health standards, with Section 25910 of the Health and Safety
27 Code, and with all rules, regulations, and orders pursuant to this division which are applicable to
28 his own actions and conduct.

1 22. Defendants failed to continue to take precautions to ensure employee safety after the
2 onset of COVID. Under LC §6409.6(a)(1) “COVID-19” means severe acute respiratory syndrome
3 coronavirus 2 (SARS-CoV-2). The employees were not required to socially distance and team
4 leaders were often times not wearing masks in the break room and sharing food amongst each
5 other. Employees were forced to work in tight spaces in close proximity to each other, ignoring
6 social distancing mandates. Defendants did not limit the number of customers they allowed inside
7 the store during the COVID outbreak. Plaintiff Gonzalez contracted COVID from work, as well
8 as many other of the aggrieved employees. Management allowed her to go back to work after two
9 weeks of quarantining even though she was still testing positive for COVID. The health
10 department had to contact Defendants and advise them to not allow Plaintiff Gonzalez return to
11 work while still testing positive for COVID. As a result of these practices, Defendants have
12 violated Cal. Labor Code §§6400, 6401, 6402, 6403, 6404, and 6407 for failure to provide a safe
13 and healthful environment for their employees, as outlined above. Defendants are liable for civil
14 penalties pursuant to Cal. Labor Code §2699 *et seq.*

15 **Failure to Timely Pay All Wages Owed**

16 (Cal. Lab. Code §§201, 202, 203, 246 and 2698 *et seq.*)

17 23. Plaintiffs reassert and reallege all preceding paragraphs as if fully set forth and
18 incorporate said paragraphs herein by reference.

19 24. As set forth above, due to Defendants’ unlawful employment practices, Defendants
20 knowingly and willfully failed to pay all sick pay wages owed to Plaintiffs at the time employment
21 terminated. Defendants willfully failed to pay aggrieved employees who are no longer employed
22 by it all sick pay compensation due upon termination of employment as required by Cal. Lab. Code
23 §§201 and 202. Pursuant to §§203 and 246, Plaintiffs and similarly situated individuals are now
24 also entitled to recover up to thirty (30) days of unpaid minimum wages due to Defendants’
25 “willful” failure to comply with the statutory requirements of §§201 and 202 of the Labor Code.
26 Moreover, because Defendants violated §§201-203 and 246, Defendants are liable for civil
27 penalties pursuant to Cal. Lab. Code § 2698 *et. seq.*
28

25. Plaintiffs believe that other employees who separated from the company, whether voluntary or involuntary, were also denied payment of sick pay wages in a timely manner as required by §203. Plaintiffs will seek civil penalties pursuant to §558 (a)(3) for herself and other aggrieved employees for each violation of §203 and §246 and will seek civil penalties under PAGA pursuant to §2698 *et. seq.*, on behalf of the Labor and Workforce and Development Agency (LWDA) against Defendants if authorized to file a representative action on behalf of the State of California.

FIRST CAUSE OF ACTION

Against All Defendants for Violation of the Private Attorneys General Act (“PAGA”)

(California Labor Code §2698 *et seq.*)

26. Plaintiffs reassert and reallege all preceding paragraphs as if fully set forth and incorporate said paragraphs herein by reference.

27. Plaintiffs are “aggrieved employees” under PAGA, as they were employed by Defendants during the applicable statutory period and suffered one or more of the Labor Code violations set forth herein. Accordingly, Plaintiffs seek to recover on behalf of themselves and all other current and former aggrieved employees of Defendants, the civil penalties provided by PAGA, plus reasonable attorneys’ fees and costs.

28. Plaintiffs seek to recover the PAGA civil penalties through a representative action permitted by PAGA and the California Supreme Court in *Arias v. Superior Court* (2009) 46 Cal. 4th 969. Therefore, class certification of the PAGA claims brought herein is not required.

29. Plaintiffs seek civil penalties pursuant to PAGA for violations of the following Labor Code provisions:

- a. Failure to Properly Calculate and Pay Sick Leave Wages (Cal. Labor Code §246)
- b. Failure to Provide Place of Employment that is Safe and Healthful (Cal. Labor Code §§6400, 6401, 6402, 6403, 6404, 6407, 2699 *et seq.*, 8 CCR 3202)
- c. Failure to Timely Pay All Wages Owed (Cal. Lab. Code §§201, 202, 203 and 2698 *et seq.*)

1 30. Labor Code §2698 *et seq.* imposes a civil penalty of one hundred dollars (\$100) per
2 pay period, per aggrieved employee for initial violations, and two hundred dollars (\$200) per pay
3 period, per aggrieved employee for subsequent violations for all Labor Code provisions for which
4 a civil penalty is not specifically provided.

5 31. Plaintiffs and the other current and former employees of Defendants are aggrieved
6 employees. They were or are employed by Defendants, and each of them, and the violations alleged
7 herein were committed against them. Plaintiffs bring this action on behalf of themselves and all
8 other current and former aggrieved employees.

9 32. At the time of each violation, Defendants employed one or more employees.

10 33. As a result of the aforesaid wrongful and illegal conduct of Defendants, and each of
11 them, Plaintiffs and aggrieved employees are entitled to civil penalties in an amount to be
12 determined at trial, pre-judgment interest, costs, and attorneys' fees.

13 34. Plaintiffs have complied with all procedural requirements of Labor Code §2699.3 prior
14 to filing this First Amended Complaint. By the Notice attached as Exhibit 1, submitted online to
15 the Labor and Workforce Development Agency ("LWDA") and served by certified mail upon
16 Defendants, Plaintiffs through counsel notified the LWDA and Defendants of the specific Labor
17 Code provisions that Defendants have violated. The LWDA did not respond to Plaintiffs' Notice
18 within the statutory timeframe, and Plaintiffs have therefore exhausted administrative remedies.
19 Pursuant to Labor Code §2699.3, Plaintiffs may now pursue these PAGA claims in this action on
20 behalf of aggrieved employees and the State of California.

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

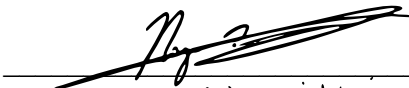
1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiffs, individually and on behalf of the aggrieved employees, pray for
3 judgement against Defendants as follows:

- 4 1. An award of civil penalties pursuant to PAGA and the Cal. Labor Code in an amount to be
5 determined at trial, but at least the jurisdictional amount of this Court;
- 6 2. An award of reasonable attorneys' fees and costs pursuant to California Labor Code §2699(g)
7 and/or other applicable law;
- 8 3. Such other and further relief that the Court may deem just and proper.

9
10 DATED: January 31, 2022

**KOUL LAW FIRM
MAJARIAN LAW GROUP, APC**

11
12
13
14 

15 BY: Nazo Koulloukian, Esq.
16 Attorneys for Plaintiffs GENESIS GONZALEZ and
17 GERRY SIEMON, and all aggrieved employees
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

EXHIBIT 1



Nazo@Koullaw.com

P (213) 761 – 5484

F (818) 561 – 3938

3435 WILSHIRE BLVD

SUITE 1710

LOS ANGELES, CA 90010

www.koullaw.com

October 26, 2021

Via E-filing:

California Labor & Workforce
Development Agency
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102

Via Certified U.S. Mail:

Mrs. Gooch's Natural Food Markets, Inc.
550 Bowie St.
Austin, TX 78703

Whole Foods Market California, Inc.
14311 Ventura Blvd
Sherman Oaks, CA 91423

CT Corporation System
c/o Amanda Garcia or Gabriela Sanchez
330 N. Brand Blvd.
Glendale, CA 91203

Mrs. Gooch's Natural Food Markets, Inc.
Whole Foods Market California, Inc.
PO Box 684786
Austin, TX 78768-4786

Re: PAGA Notice Pursuant to California Labor Code §2698 *et seq.*
Claimants: Genesis Gonzalez and Gerry Siemon
Employer: Mrs Goochs Natural Food Markets, Inc. and Whole Foods
Market California, Inc.

Dear Sir or Madam:

Genesis Gonzalez and Gerry Siemon ("Claimants") has retained Nazo Koulloukian, Esq. of the KOUL LAW FIRM and Garen Majarian, Esq. with MAJARIAN LAW GROUP, to represent them, and all other aggrieved employees, for conditions of employment and wage and hour claims against their former employers, Mrs Goochs Natural Food Markets, Inc. and Whole Foods Market California, Inc. which operate grocery stores throughout the nation, including California (hereafter collectively "Employer.")

Employer operates hundreds of full-service grocery stores throughout the nation, including California. Claimant Gonzalez worked for Employer as a meat clerk until July 9, 2021. Claimant Siemon worked as a cashier until July 21, 2021. Claimants' proposed PAGA representative action would represent numerous aggrieved employees.

Employer has violated, and/or has caused to be violated, several Labor Code provisions, and it is therefore liable for civil penalties under Cal. Labor Code §2698 *et seq.* We request that your agency investigate the claims alleged below, or permit claimant to seek civil penalties under the Private Attorney General Act (“PAGA”), Labor Code §2698 *et seq.*, on behalf of the Labor and Workforce and development Agency (“LWDA”) and the State of California in a representative action. This letter will serve as notice of these allegations pursuant to Cal. Lab. Code §2699.3.

Failure to Pay For All Hours Worked, Including Overtime Hours Worked

(Cal. Labor Code §§218, 510, 558, 1194, 1197, 1197.1, 1198, 2699 *et seq.*)

Section 2(G) or Wage Order 7 “hours worked” as “the time during which an employee is subject to the control of an employer, and including all the time the employee is suffered or permitted to work, whether or not required to do so.” When employees like Claimant and her coworkers earning at or near minimum wage do not receive payment for all hours worked, including as a result of spending time under the employer’s control donning and doffing required apparel, the result is that they are earning less than the statutory minimum wages for all hours worked in violation of Labor Code §1197, 1197.1, 1199 and Wage Order 7-2001 9(A)(1). Employer has been engaged in many unlawful employment practices which resulted in underpayment for hours worked each pay period, including overtime hours worked, as more fully set forth below:

Off-the-Clock Hours Worked

Claimants and aggrieved employees frequently worked off the clock and were routinely subjected to periods wherein they were under the Employer’s control but not compensated for their time. Claimants and aggrieved employees were expected to get dressed into their work uniform, answer COVID related health questions and participate in temperature checks, all before clocking in for each shift. These duties would take up to 8 minutes, time which they were paid zero dollars for, yet were required by their Employer to complete. In addition, Claimants and aggrieved employees would clock out yet still be required to unload delivery trucks, send shift report emails to leadership, perform final walk throughs and sanitation of their work areas, and dispose of their work uniform. Claimants and aggrieved employees were not paid for this time worked, resulting in failure to pay wages, including overtime and minimum wages. Employer has violated Labor Code §§510 1194, 1194.2, 1197, 1198, 1199 and Wage Order 7. Employer is liable for civil penalties pursuant to Labor Code §2698 *et seq.*

Failure to Pay Overtime Wages

Employer has required claimant and aggrieved employees to work hours in excess of eight hours in a day and forty in a week but has not paid these employees overtime

compensation. As a result, Claimant and aggrieved employees have been denied payment for all hours worked as required by Cal. Labor Code. §1194, §1198. Employer is liable for civil penalties pursuant to Labor Code §§558 and 2699 *et seq.*

Failure to Pay All Wages Owed Twice Per Month

Employer was required to pay Claimants and aggrieved employees all wages earned twice during each calendar month pursuant to Labor Code §204(a). Employer failed to pay all wages earned to employees as a result of the unlawful employment policies and practices discussed herein. As a result of these practices, Employees were underpaid for hours worked, including overtime and penalty wages, and this underpayment resulted in a failure to pay all wages owed twice per month. Due to this failure, Employer is liable under Labor Code §210 for failure to pay wages as required by law.

Failure to Include Nondiscretionary Bonuses in Regular

Rate of Pay to Calculate Overtime

(Cal. Labor Code §§200, 207, 218, 510, 558, 1194, 1197, 1197.1, 1198, 2699 *et seq.*)

Pursuant to Labor Code §200(a) “‘Wages’ includes all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, commission basis, or other method of calculation.”

Employer issued nondiscretionary hero pay bonuses to Claimants and aggrieved employees but failed to include bonuses when calculating the regular rate of pay for purposes of calculating overtime. It is well established that non-discretionary bonuses retroactively increase the employee’s “regular rate” of pay for purposes of calculating overtime. (Labor Code §207) The “regular rate” is calculated by dividing the hours worked in a week by all the compensation earned for that week. When an employee is later paid a bonus that is partly due to work performed in that week, this additional pay must be added into the total compensation for the week, increasing the employee’s regular rate of pay. (*Marin v. Costco Wholesale Corp.* (2008) 169 CA4th 804, 807.)

A \$500 hero pay bonus was paid to Claimants and aggrieved employees once in the first half of 2020 and then again in 2021 for continuing to work during a national pandemic. This pay was not factored into the regular rate of pay for calculating overtime.

Employer did not make any adjustments to overtime rates to incorporate the nondiscretionary bonuses, and this failure is reflected in Claimants and aggrieved employees’ paystubs. Claimants and other employees have been denied “the unpaid balance of the full amount of this... overtime compensation” as required by Cal. Labor Code. §1194. Additionally, Employer has violated Cal. Labor Code §218 and §510 and applicable Industrial Welfare Commission Wage Orders at sections (3)(A)(1) for failure

to pay overtime, as well as §1198 which makes it a violation of the labor code to fail to comply with a wage order. Employer is liable for civil penalties pursuant to Cal. Labor Code §558 and 2698 *et seq.*

Failure to Provide Place Of Employment That Is Safe And Healthful

(Cal. Labor Code §§6400, 6401, 6402, 6403, 6404, 6407, 2699 *et seq.*, 8 CCR 3202)

Cal. Labor Code § 6400(a) provides that every employer shall furnish employment and a place of employment that is safe and healthful for the employees therein. Cal. Labor Code §6401 provides that “every employer shall furnish and use safety devices and safeguards, and shall adopt and use practices, means, methods, operations, and processes which are reasonably adequate to render such employment and place of employment safe and healthful. Every employer. Pursuant to Cal. Labor Code §6402, no employer shall require, or permit any employee to go or be in any employment or place of employment which is not safe and healthful. Cal. Labor Code §6403 states that no employer shall fail or neglect to provide and use safety devices and safeguards reasonably adequate to render the employment and place of employment safe, or to adopt and use methods and processes reasonably adequate to render the employment and place of employment safe, or to do every other thing reasonably necessary to protect the life, safety, and health of employees. Cal. Labor Code § 6404 provides that no employer shall occupy or maintain any place of employment that is not safe and healthful. Cal. Labor Code § 6407 provides that every employer and every employee shall comply with occupational safety and health standards, with Section 25910 of the Health and Safety Code, and with all rules, regulations, and orders pursuant to this division which are applicable to his own actions and conduct.

Employer failed to continue to take precautions to ensure Employee safety after the onset of COVID. Under LC §6409.6(a)(1) “COVID-19” means severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2). The Employees were not required to socially distance and team leaders were often times not wearing masks in the break room and sharing food amongst each other. Employees were forced to work in tight spaces in close proximity to each other, ignoring social distancing mandates. Employer did not limit the number of customers they allowed inside the store during the COVID outbreak. Claimant Gonzalez contracted COVID from work, as well as many other of the aggrieved employees. Management allowed her to go back to work after two weeks of quarantining even though she was still testing positive for COVID. The health department had to contact Employer and advise them to not allow Claimant return to work while still testing positive for COVID. As a result of these practices, Employer have violated Cal. Labor

Code §§6400, 6401, 6402, 6403, 6404, and 6407 for failure to provide a safe and healthful environment for their Employees, as outlined above. Employer is liable for civil penalties pursuant to Cal. Labor Code §2699 *et seq.*

Failure to Provide Rest Breaks

(Cal. Labor Code §§226, 226.7, 512, 558, 2698 *et seq.*)

Employer failed to maintain a compliant rest period policy and practice that provides employees with off-duty rest periods as required by California law.

Claimants and aggrieved employees were frequently scheduled to work 8-hour shifts or longer, but they frequently often missed breaks because they were understaffed and too busy to take time away from their duties. When Claimants and aggrieved employees did receive breaks, they were forced to remain available for customers while on break. Claimants frequently worked 8-hour shifts, and her only break was a meal period. However, even meal periods were not compliant with California law, as set forth below.

Employer did not authorize or permit all of its hourly employees to take at least a ten minute rest period in which they were relieved of all duties, for every 4 hours of work, or major fraction thereof, as required by Cal. Lab. Code §226.7, §512 and Wage Order 7-2001 12(A).

Employer failed to pay Claimants and similarly situated employees all premium compensation (one hour of pay at the employee's regular rate of pay for missed or untimely rest periods) mandated by Labor Code §226.7 (b) for these missed rest periods. As a derivative claim, claimants also allege that their pay statements were inaccurate, failing to include required rest period penalties, thus failing the requirements of Labor Code §226(a). As a result of these violations, Employer is liable for civil penalties pursuant to Cal. Labor Code §558 and §2698 *et. seq.*

Failure to Provide Timely, Uninterrupted Meal Breaks

(Cal. Labor Code §§226, 226.7, 512, 558, 2699 *et seq.*)

During Claimants' employment, Employer failed to maintain a compliant meal period policy and practice. Employer failed to provide all of its hourly employees with their right to take an off-duty unpaid 30-minute meal period. Labor Code §512 provides, "[a]n employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes..." Labor Code §226.7(a) provides, "[n]o employer shall require an employee to work during any meal... period mandated by an applicable order of the Industrial Welfare Commission." Paragraph 11(A) of the Wage Orders provides, in pertinent part, "[u]nless an employee is

relieved of all duty during a 30 minute meal period, the meal period shall be considered an 'on duty' meal period and counted as time worked."

As described above, Claimants and aggrieved employees were often too busy and understaffed to take time away from their duties for breaks and were unable to take compliant meal or rest breaks. When Claimants was able to take a meal period, she was frequently interrupted as she had to remain available to assist customers. Breaks were fully non-compliant because she was unable to leave Employer's place of business and was thus under the employer's control for the entire period she was off the clock. Claimants never received second meal breaks during shifts of 10 hours or longer.

Employer failed to permit claimants and aggrieved to take timely, off-duty, meal breaks of "not less than 30 minutes" for each five consecutive hours of work in violation of Labor Code §§226.7 and 512. As a derivative claim, claimants alleges that pay statements were inaccurate, failing to include required meal period penalties, thus failing the requirements of Labor Code §226(a). As a result of these violations, Employer is liable for civil penalties pursuant to Cal. Labor Code §558 and §2698 *et. seq.*

Failure To Provide Suitable Seating

(Lab. Code section 1198 and Wage Order 7-2001, section 14)

Labor Code section 1198 states, in pertinent part, "The employment of any employee... under conditions of labor prohibited by the [Wage Order] is unlawful."

Section 14 of the applicable Wage Order provides that:

- (A) All working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats.
- (B) When employees are not engaged in the active duties of their employment and the nature of the work requires standing, an adequate number of suitable seats shall be placed in reasonable proximity to the work area and employees shall be permitted to use such seats when it does not interfere with the performance of their duties.

At all relevant times, Employer failed to provide Claimants and aggrieved employees with suitable seating during their employment as required by section 14 of the applicable Wage Order. For example, Claimants and other aggrieved employees were not provided with seating during shifts in which they worked at the meat and deli counters, in positions which would reasonably permit the use of seating. Upon information and belief, the work performed at the meat and deli counters includes customer service, weighing and labeling

items, and other common tasks that can be performed while seated and the location of the tasks to be performed made it feasible to do so while seated.

Accordingly, Claimants, on behalf of themselves and aggrieved employees, will pursue civil penalties under Labor Code §2698 *et seq.*, and all available remedies to the extent allowed by law for the alleged violations.

Failure to Reimburse For Required Business Expenses

(Cal. Labor Code §§1198, 2802, Wage Order §9, 2699 *et seq.*)

Labor Code §2802 requires employers to indemnify employees for necessary expenditures or losses incurred by employees in direct consequence of discharge of duties. Here, Employer required Claimants and employees to use their personal cellular phones for work related duties, including communicating with their leadership, but failed to reimburse Claimants and employees for this use as required by the Labor Code and Wage Order §9. Accordingly, Employer is liable for civil penalties under PAGA §2698 *et seq.*

Failure to Timely Pay All Wages Owed

(Cal. Lab. Code §§201, 202, 203 and 2698 *et seq.*)

As set forth above, due to Employer's unlawful employment practices, Employer knowingly and willfully failed to pay all minimum wages owed to Claimants at the time employment terminated. Employer willfully failed to pay aggrieved employees who are no longer employed by it all compensation due upon termination of employment as required by Cal. Lab. Code §§201 and 202. Pursuant to §§203 and 256, Claimants and similarly situated individuals are now also entitled to recover up to thirty (30) days of unpaid minimum wages due to Employer's "willful" failure to comply with the statutory requirements of §§201 and 202 of the Labor Code. Moreover, because Employer violated §§201-203 and 256, Employer is liable for civil penalties pursuant to Cal. Lab. Code § 2698 *et. seq.*

Claimants believe that other employees who separated from the company, whether voluntary or involuntary, were also denied payment of minimum wages in a timely manner as required by §203. Claimant will seek civil penalties pursuant to §558 (a)(3) for himself and other aggrieved employees for each violation of §203 and §256 and will seek civil penalties under PAGA pursuant to §2698 *et. seq.*, on behalf of the Labor and Workforce and Development Agency (LWDA) against Employer if authorized to file a representative action on behalf of the State of California.

Failure to Pay All Wages Owed Twice Per Month

Employer was required to pay Claimants and aggrieved employees all wages earned twice during each calendar month pursuant to Labor Code §204(a). Employer failed to pay all minimum wages earned to employees as a result of the unlawful employment policies and practices discussed herein. As a result of these practices, Employees were underpaid for all minimum wages owed, and this underpayment resulted in a failure to pay all wages owed twice per month.

Failure to Provide Accurate Itemized Wage Statements

(Cal. Labor Code §§ 226, 1174, 2699 *et seq*)

Employer knowingly and intentionally failed to provide timely, accurate, itemized wage statements to Claimants and the aggrieved employees, as well as maintain accurate records, in accordance with Labor Code §§ 226 and 1174. The statements provided to Claimants and aggrieved employees have not accurately reflected actual gross wages earned and total hours worked. Such failures caused injury to Claimant and others, by, among other things, impeding them from knowing the total hours worked and the amount of wages to which they are and were entitled. Employer knowingly and intentionally failed to itemize the correct gross wages earned, net wages earned, and total hours worked.

Employer also failed to maintain duplicate copies of paystubs. Duplicate copies maintained by Employer fail to state the correct hourly rate because hourly rate listed is misleading as it lacks the decimal point. The total hours worked category is also missing, as are the pay beginning and end dates. Finally, duplicate copies list the employee's entire SSN. Employer has an affirmative obligation to maintain copies of employment records, and the only employment records produced to Claimants have been noncompliant wage statements. Wage statements issued to Claimants and aggrieved employees have been defective because they failed to list total hours worked, pay beginning and end dates, and they listed the full employee SSN.

Employer issued and maintained inaccurate wage statements and records. Employer is liable for civil penalties pursuant to Labor Code § 2699 *et seq*.

Failure to Properly Calculate and Pay Sick Leave Wages

(Cal. Labor Code §246)

Employers must calculate paid sick leave for non-exempt employees in one of two ways:

- (1) Paid sick time for nonexempt employees shall be calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek; [or]
- (2) Paid sick time for nonexempt employees shall be calculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment.

Labor Code § 246 (l)

Claimants and aggrieved employees were paid sick leave wages at their base hourly rates of pay, which is less than required under either of the two alternative methods of calculation provided by Labor Code section 246(l).

Conclusion

Employer has violated a number of California wage and hour laws. Claimants respectfully requests that the agency investigate the above allegations and hereby provides notice of the allegations pursuant to PAGA's provisions. Alternatively, Claimants request that the agency inform him if it does not intend to investigate these violations so that he may pursue these claims as a representative action in civil court.

Sincerely,



Nazo Koulloukian, Esq.
Attorney for Claimant

PROOF OF SERVICE

Case No. 22STCV00610

Gonzalez and Siemon v. Mrs. Gooch's Natural Food Markets, Inc.

I, JACKELINE HERNANDEZ declare that I am a resident of or employed in the County of Los Angeles, California. I am over the age of 18 years and not a party to the entitled case. The name and address of my residence or business is KOUL LAW FIRM, 3435 Wilshire Blvd. Ste. 1710, Los Angeles, California 90010.

On February 1, 2022, I served the foregoing document described as:

FIRST AMENDED PAGA REPRESENTATIVE ACTION COMPLAINT

- _____ by placing the document(s) listed above in a sealed envelope, addressed as set forth below, and placing the envelope for collection and mailing in the place designated for such in our offices, following ordinary business practices.
- _____ by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00PM.
- X by transmitting via electronic mail the document(s) listed above to the electronic mailing address set forth below on this date before 5:00PM.
- _____ by causing a true copy thereof to be personally delivered to the person(s) at the address(es) set forth below.

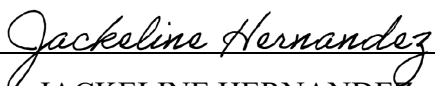
on the parties listed below by placing a true copy thereof enclosed in a sealed envelope for collection and mailing in the United States Postal Service following ordinary business practices at Los Angeles, California addressed as follows:

SEE ATTACHED SERVICE LIST

I am readily familiar with the ordinary practice of the business of collecting, processing and depositing correspondence in the United States Postal Service and that the correspondence will be deposited the same day with postage thereon fully prepaid.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on this February 1, 2022, in Los Angeles, California.


JACKELINE HERNANDEZ

PROOF OF SERVICE

Case No. 22STCV00610

Gonzalez and Siemon v. Mrs. Gooch's Natural Food Markets, Inc.

Derek R. Havel, Esq.

Email: dhavel@sheppardmullin.com

Brett Young, Esq.

Email: byoung@sheppardmullin.com

Matthew Tobias, Esq.

Email: mtobias@sheppardmullin.com

Ian Michalak, Esq.

Email: imichalak@sheppardmullin.com

Sheppard, Mullin, Richter & Hampton LLP

333 South Hope Street, 43rd Floor

Los Angeles, CA 90071

Defendant, MRS. GOOCH'S NATURAL FOOD MARKETS, INC.