

1 Larry W. Lee (State Bar No. 228175)
2 Kristen M. Agnew (State Bar No. 247656)
3 Nicholas Rosenthal (State Bar No. 268297)
4 **DIVERSITY LAW GROUP, P.C.**
5 515 S. Figueroa Street, Suite 1250
6 Los Angeles, CA 90071
7 (213) 488-6555
8 (213) 488-6554 facsimile

9 William L. Marder, Esq. (State Bar No. 170131)
10 **Polaris Law Group LLP**
11 501 San Benito Street, Suite 200
12 Hollister, CA 95023
13 Tel: (831) 531-4214
14 Fax: (831) 634-0333

15 Attorneys for Plaintiff, the Class, and Aggrieved Employees

16 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
17 **FOR THE COUNTY OF SACRAMENTO**

18 MARIA MORONES, as an individual and
19 on behalf of all others similarly situated,

20 Plaintiffs,

21 vs.

22 BIMBO BAKERIES USA, INC., a
23 Delaware corporation; and DOES 1
24 through 50, inclusive,

25 Defendants.

Case No.: 34-2018-00245481

(Assigned to the Honorable Kevin R. Culhane,
Dept. 23)

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION COMPLAINT
FOR DAMAGES**

Complaint Filed: November 28, 2018

1 Plaintiff Maria Morones (“Plaintiff”) hereby submits this First Amended Complaint
2 (“Complaint”) against Defendant Bimbo Bakeries USA, Inc. (“Defendant”), and Does 1 through
3 50 (hereinafter collectively referred to as “Defendants”), on behalf of herself and the State of
4 California and other aggrieved employees of Defendants for penalties for violations of the
5 California Labor Code, including without limitation, failure to provide employees with accurate
6 itemized wage statements as follows:

7 **INTRODUCTION**

8 1. This action is within the Court’s jurisdiction under California Labor Code
9 sections 226 and 2698 *et seq.*, the Private Attorneys General Act (“PAGA”), and the applicable
10 Wage Orders of the California Industrial Welfare Commission (“IWC”).

11 2. This Complaint challenges systemic illegal employment practices resulting in
12 violations of the California Labor Code against individuals who worked for Defendants.

13 3. Plaintiff is informed and believes, and based thereon alleges, that Defendants,
14 jointly and severally, have acted intentionally and with deliberate indifference and conscious
15 disregard to the rights of all employees in Defendants’ failure to provide accurate wage
16 statements.

17 4. Plaintiff is informed and believes, and based thereon alleges, that Defendants
18 have engaged in, among other things a system of willful violations of the California Labor Code,
19 by creating and maintaining policies, practices and customs that knowingly deny employees the
20 above stated rights and benefits.

21 **JURISDICTION AND VENUE**

22 5. The Court has jurisdiction over the violations of California Labor Code sections
23 226 and 2698 *et seq.*

24 6. Venue is proper in Sacramento County because Defendant maintains operations in
25 Sacramento County, and Plaintiff was employed by Defendant in Sacramento County.

26 **PARTIES**

27 7. Plaintiff began employment by Defendant on or about January 6, 2013. During
28 her employment with Defendant, Plaintiff was not provided proper and accurate itemized wage

1 statements.

2 8. Plaintiff is informed and believes, and based thereon alleges, that at all times
3 herein mentioned Defendant Bimbo Bakeries USA, Inc. is and was a Delaware corporation,
4 licensed to do business and actually doing business in the State of California. As such, and based
5 upon all the facts and circumstances incident to Defendant's business, Defendant is subject to
6 California Labor Code sections 226 and 2698 *et seq.*

7 9. Plaintiff does not know the true names or capacities, whether individual, partner
8 or corporate, of the defendants sued herein as Does 1 through 50, inclusive, and for that reason,
9 said defendants are sued under such fictitious names, and Plaintiff prays for leave to amend this
10 complaint when the true names and capacities are known. Plaintiff is informed and believes and
11 based thereon alleges that each of said fictitious defendants was responsible in some way for the
12 matters alleged herein and proximately caused Plaintiff and members of the general public and
13 aggrieved employees to be subject to the illegal employment practices, wrongs and injuries
14 complained of herein.

15 10. At all times herein mentioned, each of said Defendants participated in the doing
16 of the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the
17 Defendants, and each of them, were the agents, servants and employees of each of the other
18 Defendants, as well as the agents of all Defendants, and at all times herein mentioned, were
19 acting within the course and scope of said agency and employment.

20 11. Plaintiff is informed and believes, and based thereon alleges, that at all times
21 material hereto, each of the Defendants named herein was the agent, employee, alter ego and/or
22 joint venturer of, or working in concert with each of the other co-Defendants and was acting
23 within the course and scope of such agency, employment, joint venture, or concerted activity. To
24 the extent said acts, conduct, and omissions were perpetrated by certain Defendants, each of the
25 remaining Defendants confirmed and ratified said acts, conduct, and omissions of the acting
26 Defendants.

27 12. At all times herein mentioned, Defendants, and each of them, were members of,
28 and engaged in, a joint venture, partnership and common enterprise, and acting within the course

1 and scope of, and in pursuance of, said joint venture, partnership and common enterprise.

2 13. At all times herein mentioned, the acts and omissions of various Defendants, and
3 each of them, concurred and contributed to the various acts and omissions of each and all of the
4 other Defendants in proximately causing the injuries and damages as herein alleged. At all times
5 herein mentioned, Defendants, and each of them, ratified each and every act or omission
6 complained of herein. At all times herein mentioned, Defendants, and each of them, aided and
7 abetted the acts and omissions of each and all of the other Defendants in proximately causing the
8 damages as herein alleged.

9 **CLASS ACTION ALLEGATIONS**

10 14. **Definition:** The named individual Plaintiff seeks class certification, pursuant to
11 California Code of Civil Procedure section 382. Plaintiff proposes the following class:

12 All current and former California non-exempt employees of Defendants who
13 received shift premium wages at any time between October 9, 2017, through
14 October 7, 2018.

15 15. **Numerosity:** The members of the Class are so numerous that joinder of all
16 members would be impractical, if not impossible. The identity of the members of the Class is
17 readily ascertainable by review of Defendants' records, including payroll records. Plaintiff is
18 informed and believes, and based thereon alleges, that Defendants failed to provide proper wage
19 statements in violation of Labor Code sections 226.

20 16. **Adequacy of Representation:** The named Plaintiff is fully prepared to take all
21 necessary steps to represent fairly and adequately the interests of the class defined above.
22 Plaintiff's attorneys are ready, willing and able to fully and adequately represent the Class and
23 the individual Plaintiff. Plaintiff's attorneys have prosecuted and settled wage-and-hour class
24 actions in the past and currently have a number of wage-and-hour class actions pending in
25 California state and federal courts.

26 17. Defendants uniformly administered a corporate policy, practice of failing to
27 provide proper payroll records in violation of Labor Code section 226. Plaintiff is informed and
28 believes, and based thereon alleges, that this corporate conduct is accomplished with the

1 advanced knowledge, intent and willfulness.

2 18. **Common Question of Law and Fact:** There are predominant common questions
3 of law and fact and a community of interest amongst Plaintiff and the claims of the Class
4 concerning Defendants’ policy and practice of failing to provide proper payroll records in
5 violation of Labor Code sections 226.

6 19. **Typicality:** The claims of Plaintiff are typical of the claims of all members of the
7 Class in that Plaintiff suffered the harm alleged in this Complaint in a similar and typical manner
8 as the Class members. As with other California employees, Plaintiff was not provided proper and
9 accurate itemized wage statements. Specifically, when Plaintiff and other Shift Premium Class
10 Members were paid shift premium wages—including, without limitation, “First Shift,” “First
11 Shift OT,” “Second Shift OT” and “Sunday Prem.”—the wage statements issued by Defendant
12 did not identify the accurate total hours worked. Rather, when the hours shown on the wage
13 statements are added up, they do not appear to add up to the actual total hours worked.
14 Therefore, Plaintiff is a member of the Class and have suffered the alleged violations of
15 California Labor Code section 226.

16 20. The California Labor Code sections upon which Plaintiff bases these claims are
17 broadly remedial in nature. These laws and labor standards serve an important public interest in
18 establishing minimum working conditions and standards in California. These laws and labor
19 standards protect the average working employee from exploitation by employers who may seek
20 to take advantage of superior economic and bargaining power in setting onerous terms and
21 conditions of employment.

22 21. The nature of this action and the format of laws available to Plaintiff and
23 members of the Class identified herein make the class action format a particularly efficient and
24 appropriate procedure to redress the wrongs alleged herein. If each employee were required to
25 file an individual lawsuit, the corporate Defendants would necessarily gain an unconscionable
26 advantage since it would be able to exploit and overwhelm the limited resources of each
27 individual plaintiff with their vastly superior financial and legal resources. Requiring each Class
28 member to pursue an individual remedy would also discourage the assertion of lawful claims by

1 employees who would be disinclined to file an action against their former and/or current
2 employer for real and justifiable fear of retaliation and permanent damage to their careers at
3 subsequent employment.

4 22. The prosecution of separate actions by the individual Class Members, even if
5 possible, would create a substantial risk of (a) inconsistent or varying adjudications with respect
6 to individual Class Members against the Defendants and which would establish potentially
7 incompatible standards of conduct for the Defendants, and/or (b) adjudications with respect to
8 individual Class Members which would, as a practical matter, be dispositive of the interest of the
9 other Class Members not parties to the adjudications or which would substantially impair or
10 impede the ability of the Class Members to protect their interests. Further, the claims of the
11 individual members of the Class are not sufficiently large to warrant vigorous individual
12 prosecution considering all of the concomitant costs and expenses.

13 23. Such a pattern, practice and uniform administration of corporate policy regarding
14 illegal payroll practices described herein is unlawful and creates an entitlement to recovery by
15 Plaintiff and the Class identified herein, in a civil action, for applicable penalties, reasonable
16 attorneys' fees, and costs of suit according to the mandate of California Labor Code section 226
17 and Code of Civil Procedure section 1021.5.

18 24. Proof of a common business practice or factual pattern, which the named Plaintiff
19 experienced and is representative of, will establish the right of each of the members of the
20 Plaintiff Class to recovery on the causes of action alleged herein.

21 **PAGA ALLEGATIONS**

22 25. Defendants operate a multinational bakery products manufacturing business,
23 which provides baked goods to consumers throughout the State of California. Defendants hired
24 Plaintiff as a non-exempt employee in about January 2013. As with other California employees,
25 Plaintiff was not provided proper and accurate itemized wage statements. Specifically, when
26 Plaintiff and aggrieved employees were paid shift premium wages—including, without
27 limitation, “First Shift,” “First Shift OT,” “Second Shift OT” and “Sunday Prem.”—the wage
28 statements issued by Defendants did not identify₆ the accurate total hours worked. Rather, when

1 the hours shown on the wage statements are added up, they do not appear to add up to the actual
2 total hours worked. Therefore, Plaintiff was and is a victim of the policies, practices, and
3 customs of Defendants complained of in this action in ways that have deprived her of the rights
4 guaranteed by California Labor Code sections 226 and 2698, *et seq.*

5 **FIRST CAUSE OF ACTION**

6 **VIOLATION OF LABOR CODE § 226**

7 **(BY PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS)**

8 26. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 25 as
9 though fully set forth herein.

10 27. Defendants failed in their affirmative obligation to provide accurate itemized
11 wage statements. Defendants, as a matter of policy and practice, did not provide accurate records
12 in violation of Labor Code section 226.

13 28. Plaintiff and the Class were employees of Defendants and as such should have
14 received accurate, itemized wage statements, pursuant to Labor Code section 226(a). When
15 Plaintiff and other Class Shift Premium Class Members were paid shift premium wages—
16 including, without limitation, “First Shift,” “First Shift OT,” “Second Shift OT” and “Sunday
17 Prem.”—the wage statements issued by Defendant did not identify the accurate total hours
18 worked. Rather, when the hours shown on the wage statements are added up, they do not appear
19 to add up to the actual total hours worked

20 29. Such a pattern, practice and uniform administration of corporate policy as
21 described herein is unlawful and creates an entitlement to recovery by the Plaintiff and the Class
22 identified herein, in a civil action, for all penalties pursuant to Labor Code section 226, including
23 interest thereon, attorneys’ fees, and costs of suit according to the mandate of California Labor
24 Code section 226.

25 **SECOND CAUSE OF ACTION**

26 **VIOLATION OF LABOR CODE § 2698, *ET SEQ.***

27 **(BY PLAINTIFF, ON BEHALF OF THE STATE OF CALIFORNIA AND AGGRIEVED**
28 **EMPLOYEES, AGAINST ALL DEFENDANTS)**

1 30. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 29 as
2 though fully set forth herein.

3 31. Defendants uniformly administered a corporate policy, practice of failing to
4 provide accurate itemized wage statements to their employees in violation of Labor Code section
5 226. At all times herein mentioned, Labor Code section 226 applied to Defendants' employment
6 of Plaintiff and other Aggrieved Employees. Labor Code section 226 provides in part that:

7 (a) An employer, semimonthly or at the time of each payment of wages, shall
8 furnish to his or her employee, either as a detachable part of the check, draft, or
9 voucher paying the employee's wages, or separately if wages are paid by personal
10 check or cash, an accurate itemized statement in writing showing (1) gross wages
11 earned, (2) total hours worked by the employee, except as provided in subdivision
12 (j), (3) the number of piece-rate units earned and any applicable piece rate if the
13 employee is paid on a piece-rate basis, (4) all deductions, provided that all
14 deductions made on written orders of the employee may be aggregated and shown
15 as one item, (5) net wages earned, (6) the inclusive dates of the period for which
16 the employee is paid, (7) the name of the employee and only the last four digits of
17 his or her social security number or an employee identification number other than
18 a social security number, (8) the name and address of the legal entity that is the
19 employer and, if the employer is a farm labor contractor, as defined in subdivision
20 (b) of Section 1682, the name and address of the legal entity that secured the
21 services of the employer, and (9) all applicable hourly rates in effect during the pay
22 period and the corresponding number of hours worked at each hourly rate by the
employee and, beginning July 1, 2013, if the employer is a temporary services
employer as defined in Section 201.3, the rate of pay and the total hours worked for
each temporary services assignment. The deductions made from payment of wages
shall be recorded in ink or other indelible form, properly dated, showing the month,
day, and year, and a copy of the statement and the record of the deductions shall be
kept on file by the employer for at least three years at the place of employment or
at a central location within the State of California. For purposes of this subdivision,
"copy" includes a duplicate of the itemized statement provided to an employee or
a computer-generated record that accurately shows all of the information required
by this subdivision.

23 Cal. Lab. Code § 226(a). At all times herein mentioned, Defendants failed in their affirmative
24 obligation to provide Plaintiff and other Aggrieved Employees accurate itemized wage
25 statements.

26 32. Plaintiff provided written notice to the California Labor & Workforce
27 Development Agency ("LWDA") of Defendants' violation of California Labor Code section 226
28 pursuant to PAGA on or about September 11, 2018.

1 33. The LWDA has not provided written notice within 65 calendar days of Plaintiff's
2 notice as to whether the LWDA intends to investigate Plaintiff's allegations. As such, Plaintiff
3 has therefore complied with all notice and exhaustion requirements pursuant to PAGA.

4 34. Pursuant to Labor Code section 2699(a), Plaintiff seeks recovery of all applicable
5 penalties pursuant to PAGA, for violation of Labor Code section 226, on behalf of the following
6 aggrieved employees (who shall be collectively referred to as the "Aggrieved Employees"): all
7 current and former employees of Defendants who were paid shift premium wages at any time
8 during the period of time from September 11, 2017 through October 7, 2018.

9 **PRAYER FOR RELIEF**

10 WHEREFORE, Plaintiff prays for judgment for herself and all others on whose behalf
11 this suit is brought against Defendants, jointly and severally, as follows:

- 12 1. For an order certifying the proposed Class;
- 13 2. For an order appointing Plaintiff as the representative of the Class as described
14 herein;
- 15 3. Upon the First Cause of Action, for penalties pursuant to California Labor Code
16 section 226, and for costs and attorneys' fees;
- 17 4. Upon the Second Cause of Action, for penalties pursuant to California Labor
18 Code section 2698 *et seq.*, and for costs and attorneys' fees;
- 19 5. For fees and costs as provided by California Labor Code sections 226 and Code of
20 Civil Procedure section 1021.5; and
- 21 6. For such other and further relief the Court may deem just and proper.

22
23 DATED: June 27, 2019

DIVERSITY LAW GROUP, P.C.

24
25 By: _____

Larry W. Lee
Kristen M. Agnew
Nick Rosenthal

26
27 Attorneys for Plaintiff, the Class, and Aggrieved
28 Employees

1 **PROOF OF SERVICE**

2 **(Code of Civil Procedure Sections 1013a, 2015.5)**

3
4 STATE OF CALIFORNIA]
5 COUNTY OF LOS ANGELES]ss.
6]

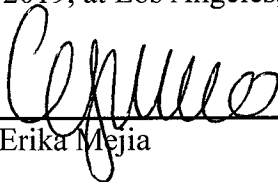
7 I am employed in the County of Los Angeles, State of California. I am over the age of
8 18 and not a party to the within action; my business address is 515 S. Figueroa Street, Suite
9 1250, Los Angeles, California 90071.

10 On July 15, 2019, I served the following document(s) described as: **FIRST AMENDED**
11 **CLASS AND REPRESENTATIVE ACTION COMPLAINT FOR DAMAGES** on the
12 interested parties in this action as follows:

13 John S. Battenfeld
14 Ashley A. Baltazar
15 Morgan, Lewis & Bockius LLP
16 One Market Spear Street Tower
17 San Francisco, California 94105
18 *Attorneys for Defendant Bimbo Bakeries USA, Inc.*

19 X BY MAIL: by placing _____ the original or X a true and correct
20 copy thereof enclosed, in (a) sealed envelope(s) addressed to the party(ies) listed above or on the
21 attached mailing list. I am readily familiar with the firm's practice for collection and processing
22 of correspondence and other materials for mailing with the United States Postal Service. On this
23 date, I sealed the envelope(s) containing the above materials and placed the envelope(s) for
24 collection and mailing on this date at the address above following our office's ordinary business
25 practices. The envelope(s) will be deposited with the United States Postal Service on this date,
26 in the ordinary course of business.

27 I declare under penalty of perjury under the laws of the State of California that the
28 above is true and correct. Executed on July 15, 2019, at Los Angeles, California.

29 
30 _____
31 Erika Mejia