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IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

Jose Ignacio Mazahua Reyes, Nabeel Al)	Case No.
Shaikhli, Hsit Hsit, Ingryd Nieves Estrada,)	
Manuela Peña, Ry Som, and Columbus Wah,)	CLASS ACTION COMPLAINT
individually and on behalf of all others)	
similarly situated,)	Declaratory Judgment ORS
)	28.010, Oregon wage laws,
Plaintiffs,)	Oregon sick leave
)	
vs.)	CLAIMS NOT SUBJECT TO
)	MANDATORY ARBITRATION
PORTLAND SPECIALTY BAKING, LLC, a)	
Domestic Limited Liability Company,)	JURY TRIAL REQUESTED
Defendant.)	

Plaintiffs, on behalf of themselves and all other similarly situated current and former
Portland Specialty Baking employees, hereby allege:

INTRODUCTORY STATEMENT

1.

Plaintiffs are current and former employees of Defendant Portland Specialty Baking,
LLC ("Defendant" or "Portland Specialty Baking"), who worked manufacturing baked goods.
They bring this action for damages and declaratory and injunctive relief on behalf of themselves
and a class of current and former employees against Defendant.

///

1 2.

2 Plaintiffs and the proposed class are primarily immigrants and/or refugees, many of
3 whom do not speak English. Defendant regularly requires them to work in excess of 10 hours in
4 a 24 hour period and to work more than 40 hours in a week.

5 3.

6 For over a century, ORS 652.020 has required manufacturers, among others, to pay
7 overtime at the rate of time and one-half the regular wage to employees who work more than 10
8 hours in a 24 hour period and has prohibited them from requiring or permitting employees to
9 work more than 13 hours in a 24 hour period.

10 4.

11 ORS 652.010 explains that these regulations of maximum hours protect “health and
12 physical well-being” and allow workers the time and capacity to participate meaningfully as
13 citizens of the state.

14 5.

15 Plaintiffs allege: 1) that they and other class members were not paid both daily overtime
16 and weekly overtime when they worked both in a workweek; 2) that Defendant did not properly
17 calculate their daily hours within a 24-hour period, leading to unpaid daily overtime; 3) that
18 Defendant required that they and other class members work more than 13 hours in a 24 hour
19 period; and 4) that Defendant maintains and enforces an attendance control policy that violates
20 the Oregon Paid Sick Leave law.

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THE PARTIES

6.

Defendant Portland Specialty Baking, LLC, is a Domestic Limited Liability Company registered with the State of Oregon, with a principal place of business in Multnomah County, maintaining an office in Multnomah County, and conducting regular, sustained business in Multnomah County, Oregon.

7.

At all relevant times, Plaintiffs Jose Ignacio Mazahua Reyes and Ry Som were residents of Clark County, Washington; and Plaintiffs Nabeel Al Shaikhli, Hsit Hsit, Ingrid Nieves Estrada, Manuela Peña, and Columbus Wah were residents of Multnomah County, Oregon.

FACTUAL ALLEGATIONS

8.

Portland Specialty Baking, LLC (“Defendant”) is a commercial bakery located in Multnomah County, Oregon that uses machinery to produce bagels, pies, cakes, muffins, pretzels, and other baked goods for retail outlets, such as Starbucks, Walmart, Costco, WinCo and Jamba Juice, and to be sold under national labels, such as Franz and Rich’s.

9.

Plaintiffs all are current or former production employees who worked for Defendant during the following approximate time periods:

- a) Jose Ignacio Mazahua Reyes has worked for Defendant from September 2007 to the present.
- b) Nabeel Al Shaikhli has worked for Defendant from April 2015 to the present.
- c) Hsit Hsit has worked for Defendant from August 2014 to the present.

1 d) Ingrid Nieves Estrada has worked for Defendant from May 2015 to the present.

2 e) Manuela Peña has worked for Defendant most recently from August 2015 to the
3 present,

4 f) Ry Som worked for Defendant from September 2013 to March 2016.

5 g) Columbus Wah worked for Defendant from May 2013 to May 2016.

6 CLASS ACTION ALLEGATIONS

7 10.

8 Plaintiffs seek to bring this action pursuant to ORCP 32 on behalf of themselves and all
9 others similarly situated. Plaintiffs seek to represent a class of all current and former production
10 workers who worked for Defendant between August 8, 2014, and the present.

11 **Numerosity**

12 11.

13 The members of the class are so numerous that joinder of all members is impracticable.
14 Defendant employs approximately 175 production workers at any given time. In the last two
15 years, Defendant has employed several hundred production workers.

16 **Common Questions of Fact and Law**

17 12.

18 There are questions of law and fact common to the class, including but not limited to the
19 following:

20 (a) Whether an employee who works both more than 10 hours in a 24-hour period and
21 more than 40 hours in that workweek is entitled to receive an overtime premium both (1) for
22 hours worked in excess of 10 hours in a day in the first 40 hours of the workweek and (2) for
23 hours in excess of 40 hours in a week.

1 (b) Whether Defendant failed to pay Plaintiffs and other class members all legally
2 required weekly and daily overtime premiums when production workers worked both more than
3 10 hours in at least one 24-hour period in the first 40 hours of the workweek and more than 40
4 hours in the same workweek;

5 (c) Whether Defendant failed to pay Plaintiffs and other class members daily overtime
6 premiums for all hours worked over 10 hours in a 24-hour period in two consecutive days;

7 (d) Whether Defendant required or permitted Plaintiffs and other class members to work
8 for more than 13 hours during a 24-hour period;

9 (e) Whether Portland Specialty Baking has a points-based attendance policy that assigns
10 disciplinary points and/or written warnings for use of legally protected sick leave;

11 (f) Whether Portland Specialty Baking's "Attendance Points" sick leave policy violates
12 Oregon sick leave laws;

13 (g) Whether, in 2016, Portland Specialty Baking took adverse employment actions when
14 Plaintiffs and other class members took accrued sick leave.

15 **Typicality**

16 13.

17 Plaintiffs' claims are typical of the claims of the class members because they are based
18 on the same factual, legal and remedial theories as the claims of the class.

19 **Adequacy of Representation**

20 14.

21 Plaintiffs can and will fairly and adequately represent and protect the interests of the class
22 because Plaintiffs are similarly situated with, and have suffered similar injuries as, the members
23 of the class that they seek to represent. Plaintiffs have no interests that conflict with or are

1 antagonistic to the interests of the entire class. Plaintiffs have retained attorneys competent and
2 experienced in employment law and class actions who will vigorously prosecute this litigation.

3 **Pre-litigation Notice**

4 15.

5 On July 7, 2016, Defendant received notice pursuant to ORCP 32 H of a claim for
6 damages and notice of nonpayment pursuant to ORS § 652.150 on behalf of Plaintiffs and
7 putative class members.

8 **Superiority**

9 16.

10 A class action is superior to other available methods for the fair and efficient adjudication
11 of the controversy for at least the following reasons:

12 (a) Prosecution of separate actions by individual members of this class would create a
13 risk of inconsistent or varying adjudications, which would establish incompatible
14 standards of conduct for Defendant;

15 (b) Injunctive and declaratory relief requested would affect the class as a whole;

16 (c) Common questions of law and fact predominate over questions affecting only
17 individual members;

18 (d) Individual class members would have little interest in controlling the litigation due to
19 the relatively small size of most claims and because the class consists largely of
20 immigrants and refugees, many of whom do not speak English and who speak over a
21 dozen separate native languages;

22 (e) Upon information and belief, there are no pending lawsuits concerning this
23 controversy;

1 (f) This is a desirable forum because Defendant's operations are located in Multnomah
2 County, all acts sued upon occurred in Multnomah County and many class members
3 reside in this or surrounding counties;

4 (g) A class action will be an efficient method of adjudication of the claims of the class
5 members, while as a practical matter it will be difficult for individual class members
6 to bring lawsuits due to language and financial barriers; and

7 (h) Class members have claims that are not significant in amount relative to the expense
8 of litigation and the complexities of the issues.

9
10 FIRST CLAIM FOR RELIEF (Failure to pay both daily and weekly overtime)

11 17.

12 Paragraphs 1-16 above are adopted by reference.

13 18.

14 Employees working on the manufacturing production lines ("production employees")
15 often work long and difficult shifts of over 10 hours in a 24 hour period, some through the night
16 and in the early morning, triggering their right to daily overtime under ORS 652.020.

17 19.

18 In addition, production employees often work more than 40 hours in a workweek,
19 triggering their right to weekly overtime under ORS 653.261 and its attendant regulations.

20 20.

21 During Plaintiffs' employment, Defendant had a custom or practice during weeks in
22 which an employee worked more than 40 hours in the week, and also worked days in excess of
23

1 10 hours in the first 40 hours of the workweek of not compensating the employee for both daily
2 and weekly overtime premiums.

3 21.

4 Defendant's failure to pay Plaintiffs and other members of the class as alleged above
5 resulted in a violation of ORS 653.261, and its attendant regulation OAR 839-020-0030, in the
6 workweeks in which Plaintiffs and other class members worked both more than 10 hours in at
7 least one 24-hour period in the first 40 hours of the workweek and more than 40 hours in the
8 week. Alternatively, Defendant's failure to pay Plaintiffs and other members of the class as
9 alleged above resulted in a violation of ORS 652.020 in the workweeks in which Plaintiffs and
10 other class members worked both more than 10 hours in at least one 24-hour period in the first
11 40 hours of the workweek and more than 40 hours in the week

12 22.

13 Plaintiffs and other members of the class are entitled to their unpaid overtime wages and
14 civil penalties in the amount of 30 days of wages pursuant to ORS § 653.055.

15 23.

16 Specifically, Plaintiffs are owed the following estimated unpaid overtime and penalty
17 wages:

- 18 (a) Plaintiff Mazahua Reyes: \$989 in unpaid overtime and \$2,580 in penalty wages;
- 19 (b) Plaintiff Al Shaikhli: \$560 in unpaid overtime and \$2,460 in penalty wages;
- 20 (c) Plaintiff Hsit: \$650 in unpaid overtime and \$2,460 in penalty wages;
- 21 (d) Plaintiff Nieves Estrada: \$150 in unpaid overtime and \$2,460 in penalty wages;
- 22 (e) Plaintiff Peña: \$238 in unpaid overtime and \$2,460 in penalty wages;
- 23 (f) Plaintiff Som: \$185 in unpaid overtime and \$2,508 in penalty wages;

1 (g) Plaintiff Wah: \$528 in unpaid overtime and \$2,880 in penalty wages.

2 24.

3 Plaintiffs are entitled to attorney fees and costs under ORS §§ 652.200 and 653.055.

4
5 SECOND CLAIM FOR RELIEF (Failure to pay daily overtime)

6 25.

7 Paragraphs 1-16 and 18-22 above are adopted by reference.

8 26.

9 Despite the difficulty of the production positions and the length of shifts, production
10 workers frequently are asked to or scheduled to work two consecutive days with the shift on the
11 second day starting less than 24 hours after their work commenced on the first day.

12 27.

13 During Plaintiffs' employment, Defendant had a custom or practice not to compensate
14 Plaintiffs and other class members a daily overtime premium for all of the additional hours over
15 10 worked within one 24-hour period where the 24-hour period included work on two
16 consecutive work days.

17 28.

18 Defendant violated ORS § 652.020 when it failed to pay daily overtime to Plaintiffs
19 Mazahua Reyes, Al Shaikhli, Hsit, Nieves Estrada, and Wah and other members of the class who
20 worked more than 10 hours during a 24-hour period split between two consecutive work days.

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1 29.

2 Plaintiffs and other class members are entitled to unpaid overtime wages under §§
3 652.020 and 653.055 and civil penalties in the amount of 30 days of wages pursuant to ORS §
4 653.055.

5 30.

6 Specifically and in the alternative to Plaintiffs' first claim for relief, Plaintiffs are owed
7 the following estimated unpaid daily overtime and penalty wages:

8 (h) Plaintiff Mazahua Reyes: \$33 in unpaid overtime and \$2,580 in penalty wages;

9 (i) Plaintiff Al Shaikhli: \$73 in unpaid overtime and \$2,460 in penalty wages;

10 (j) Plaintiff Hsit: \$270 in unpaid overtime and \$2,460 in penalty wages;

11 (k) Plaintiff Nieves Estrada: \$70 in unpaid overtime and \$2,460 in penalty wages;

12 (l) Plaintiff Wah: \$52 in unpaid overtime and \$2,880 in penalty wages.

13 31.

14 Plaintiffs are entitled to attorney fees and costs under ORS §§ 652.200 and 653.055.

15
16 **THIRD CLAIM FOR RELIEF (Timely payment upon termination)**

17 32.

18 Paragraphs 1-16, 18-24, and 26-31 above are adopted by reference.

19 33.

20 Defendant's failure to make payments as alleged in the first and second claims for relief
21 to Plaintiffs Som and Wah and other members of the class who are no longer employees of
22 Defendant resulted in a violation of ORS § 652.140 when Defendant did not pay all wages
23 earned and unpaid in the time specified by statute after termination of employment.

1 34.

2 Defendant acted willfully in failing to pay Plaintiffs Som and Wah and other members of
3 the class who are no longer employees of Defendant their wages in full.

4 35.

5 Plaintiffs Som and Wah and other members of the class who are no longer employees of
6 Defendant are entitled to civil penalties in the amount of 30 days of wages pursuant to ORS §
7 652.150.

8 36.

9 Specifically, Plaintiffs Som and Wah are owed the following penalty wages:

10 (a) Plaintiff Som: \$2,508 in penalty wages;

11 (b) Plaintiff Wah: \$2,880 in penalty wages.

12 37.

13 Plaintiffs Som and Wah are entitled to attorney fees and costs under ORS §§ 652.200.

14
15 FOURTH CLAIM FOR RELIEF (Exceeding maximum working hours in manufacturing)

16 38.

17 Paragraphs 1-16, 18-20, and 26-27 above are adopted by reference.

18 39.

19 During Plaintiffs' employment, Defendant had a custom or practice of requiring or
20 permitting employees to work more than 13 hours during a 24 hour period.

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1 40.

2 Defendant violated ORS § 652.020 when it required or permitted Plaintiffs Mazahua
3 Reyes, Al Shaikhli and Hsit and other members of the class to work for more than 13 hours
4 during a 24 hour period.

5 41.

6 Plaintiffs have no remedy at law to address the violation of maximum working hours.

7 42.

8 Plaintiffs and members of the class request declaratory relief pursuant to ORS § 28.010
9 and injunctive relief pursuant to ORS § 28.080 to prevent Defendants from requiring or
10 permitting production workers from working more than 13 hours in a 24-hour period in violation
11 of ORS § 652.020.

12 43.

13 Plaintiffs are entitled to costs pursuant to ORS § 28.100.

14
15 FIFTH CLAIM FOR RELIEF (Violation of Oregon sick leave law)

16 44.

17 Paragraphs 1-16 are adopted by reference.

18 45.

19 After January 1, 2016, Defendant has maintained and applied an absence policy that uses
20 a point system with escalating negative employment consequences if employees are tardy or
21 absent (“Attendance Points” policy).

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1 46.

2 Under the Attendance Points policy, Defendant has represented that it will assign points
3 and issue written warnings to employees who take sick time, including time that is legally
4 protected by ORS 653.601 *et seq.*

5 47.

6 Under the Attendance Points policy, Defendant has represented that the accumulation of
7 points and written warnings may result in disciplinary action against the employee.

8 48.

9 This policy has worked to deny and interfere with the sick time to which the Plaintiffs
10 and other class members are entitled under ORS 653.601 *et seq* by discouraging Plaintiffs and
11 other class members from taking legally protected leave, and has led to adverse employment
12 actions against employees as they have received written warnings and points for taking legally
13 protected leave.

14 49.

15 Plaintiffs and members of the class who have been subject to Defendant's Attendance
16 Points policy have no remedy at law.

17 50.

18 Plaintiffs and members of the class who have been subject to Defendant's Attendance
19 Points policy request declaratory relief pursuant to ORS §§ 28.010 and 659A.885 that
20 Defendant's Attendance Points policy violates ORS § 653.641 to the extent that it includes
21 legally protected sick leave.

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1 51.

2 Plaintiffs and members of the class who have been subject to Defendant's Attendance
3 Points policy request an injunction pursuant to ORS § 28.080 and 659A.885 ordering Defendants
4 to (a) remove accrued sick leave absences from its "Attendance Points" policy and notify current
5 employees of the change in policy and (b) remove from personnel records and undo the
6 consequences of any points, written warnings and other adverse employment actions that any
7 present employees have received as a result of taking protected leave since January 1, 2016.

8 52.

9 Plaintiffs are entitled to attorney fees and costs under ORS §§ 659A.885 and costs
10 pursuant to ORS § 28.100.

11 PRAYER FOR RELIEF

12 WHEREFORE, Plaintiffs request that the Court enter judgment against Defendant as
13 follows:

- 14 1. Award unpaid weekly and daily overtime premiums for all Plaintiffs and class
15 members and specifically award:
- 16 a. Plaintiff Mazahua Reyes: \$989 in unpaid overtime;
 - 17 b. Plaintiff Al Shaikhli: \$560 in unpaid overtime;
 - 18 c. Plaintiff Hsit: \$650 in unpaid overtime;
 - 19 d. Plaintiff Nieves Estrada: \$150 in unpaid overtime;
 - 20 e. Plaintiff Peña: \$238 in unpaid overtime;
 - 21 f. Plaintiff Som: \$185 in unpaid overtime;
 - 22 g. Plaintiff Wah: \$528 in unpaid overtime;
- 23

- 1 2. Award statutory damages for violations of overtime laws of thirty days' wages
2 calculated pursuant to ORS 652.150 for all Plaintiffs and class members and
3 specifically award:
- 4 a. Plaintiff Mazahua Reyes: \$2,580 in penalty wages;
 - 5 b. Plaintiff Al Shaikhli: \$2,460 in penalty wages;
 - 6 c. Plaintiff Hsit: \$2,460 in penalty wages;
 - 7 d. Plaintiff Nieves Estrada: \$2,460 in penalty wages;
 - 8 e. Plaintiff Peña: \$2,460 in penalty wages;
 - 9 f. Plaintiff Som: \$2,508 in penalty wages;
 - 10 g. Plaintiff Wah: \$2,880 in penalty wages;
- 11 3. Award statutory damages for failure to pay wages timely upon termination of thirty
12 days' wages calculated pursuant to ORS 652.150 for Plaintiff Som, in the amount of
13 \$2,508, and Plaintiff Wah, in the amount of \$2,880, and members of the class who are
14 no longer employees of Defendant;
- 15 4. Declare that Defendant's practice of requiring or allowing production workers to
16 work more than 13 hours in a 24-hour period violates ORS § 652.020;
- 17 5. Enjoin Defendant from requiring or permitting production workers from working
18 more than 13 hours in a 24-hour period;
- 19 6. Declare that Defendant's "Attendance Points" policy violates ORS § 653.641 to the
20 extent that it includes legally protected sick leave;
- 21 7. Order Defendant to remove accrued sick leave absences from its "Attendance Points"
22 policy and notify current employees of the change in policy and to remove from
23 personnel records and undo the consequences of any points, written warnings and

- 1 other adverse employment actions that any present employees have received since
2 January 1, 2016;
- 3 8. Award pre- and post-judgment interest;
- 4 9. Award Plaintiffs' reasonable attorney fees and costs of suit; and
- 5 10. Such further relief this Court may deem necessary or proper.

6 DATED this 8th day of August, 2016.

7

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