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Attorneys for Plaintiff,
DIANA BERBER on behalf of
herself, all aggrieved employees, and the State
of California as a Private Attorneys General

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF KERN

DIANA BERBER, an individual, on behalf of
herself, all aggrieved employees, and the State
of California as a Private Attorneys General,

Plaintiffs,

vs.

DELANO FARMS COMPANY, a Washington
corporation, and DOES 1-50, inclusive,

Defendants.

Case No.: BCV-20-101243

REPRESENTATIVE ACTION

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

Plaintiff DIANA BERBER brings this PAGA representative action complaint on behalf
of herself, all aggrieved employees, and the State of California as a Private Attorneys General,
and alleges as follows:

NATURE OF THE ACTION

1. Plaintiff DIANA BERBER worked as a quality control employee for defendant DELANO FARMS COMPANY and Does 1-50 (collectively "Defendants"). Defendants operations are based upon planting, picking, and packaging grapes. Plaintiff brings this action pursuant to the Private Attorneys General Act of 2004 ("PAGA"), Cal. Labor Code §2698 *et seq.*, on a representative basis. All current and former employees of Defendant within one year of serving notice on the LWDA to the present are aggrieved employees.

2. Defendants failed to comply with California Labor Code requirements due to erroneous, willful and intentional employment practices and policies. Plaintiff brings this representative action on behalf of herself, all other similarly situated aggrieved employees, and the State of California, based upon the claims articulated below. Plaintiff provided notice of her claims pursuant to §2698 *et seq.*, to the Labor and Workforce and Development Agency ("LWDA") as illustrated by the attached Exhibit, the content of which is expressly incorporated herein. The LWDA has not provided any notice to Plaintiff following the exhaustion of the 65-day notice period required by 2699.3(a)(2)(B). Accordingly, Plaintiff now brings this Complaint for civil penalties under the Private Attorneys General Act ("PAGA"), Labor Code §2698 *et seq.*

3. Defendants have had a consistent policy and/or practice of: (1) failing to pay for all hours worked, including overtime hours worked; (2) failing to timely pay all wages owed; (3) failing to provide rest breaks; (4) failing to provide compliant off-duty meal breaks; and (5) failing to provide accurate wage statements and maintain accurate payroll records. Defendants are therefore liable for civil penalties under the Cal. Labor Code, including the Private Attorney General Act ("PAGA"), Labor Code §2698 *et seq.*, as described more fully herein.

THE PARTIES

7. Plaintiff DIANA BERBER is a resident of the State of California and was employed as an hourly, nonexempt employee of Defendants from 2014 through September of 2019.

8. Defendant DELANO FARMS COMPANY is a corporation incorporated in Washington and doing business in California with the capacity to sue and to be sued, and doing business, in the county of Kern, State of California.

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

6 10. Plaintiff is informed and believes and thereon alleges that each Defendant, directly or
7 indirectly, or through agents or other persons, employed Plaintiff and other aggrieved employees
8 of the representative class, and exercised control over their wages, hours, and working
9 conditions. Plaintiff is informed and believes and thereon allege that each Defendant acted in all
10 respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme,
11 business plan or policy in all respects pertinent hereto, and the acts of each Defendant is legally
12 attributable to the other Defendants.

13 JURISDICTION AND VENUE

14 11. Venue is proper in this judicial district because Defendants conduct business in this
15 county and each defendant has legal obligations to Plaintiff and many of the aggrieved
16 employees in this case that arose in this county.

17 12. The statutory penalties sought by Plaintiff exceeds the minimal jurisdictional limits of
18 the Superior Court and will be established according to proof at trial. Based on information,
19 investigation and analysis, Plaintiff alleges that the amount in controversy, including claims for
20 monetary damages, penalties and attorney's fees is more than twenty-five thousand dollars
21 (\$25,000).

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

26 ///

27 ///

28 ///

1 **PAGA REPRESENTATIVE ACTION ALLEGATIONS**

2 14. During the relevant time-period, Defendants committed various violations of the
3 California Labor Code as alleged below in more detail. Defendants enforce multiple policies that
4 violate state law, which are intended to increase profits to the detriment of aggrieved employees.

5 15. Defendant DELANO FARMS COMPANY, is a company with its operations based
6 on planting, picking, and packaging grapes. This representative action represents over one
7 hundred current and former aggrieved employees.

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

11 17. Plaintiff and all current and former employees within one year of filing this action to
12 the present are aggrieved employees within the meaning of Labor Code 2699, *et seq.* (See Labor
13 code §2699(c).)

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

16 **Failure to Pay for All Hours Worked, Including Overtime Hours Worked**

17 (Cal. Labor Code §§218, 510, 558, 1194, 1197, 1198, 2698 *et seq.*)

18 19. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
19 incorporate said paragraphs herein by reference.

20 20. Section 2(G) of Wage Order 14 defines “hours worked” as “the time during which an
21 employee is subject to the control of an employer, and including all the time the employee is
22 suffered or permitted to work, whether or not required to do so.” When employees like Plaintiff
23 and aggrieved employees earning wages at or near minimum wage do not receive payment for all
24 hours worked, including time shaved from their timecards due to employer rounding, the result is
25 that they are earning less than the statutory minimum wages for all hours worked. Defendants
26 have been engaged in many unlawful employment practices which resulted in underpayment for
27 hours worked each pay period, including overtime hours worked, paying overtime hours at the
28

regular rate of pay, shaving time from their timecards due to employer rounding and auto-deducting meal practice practices, as more fully set forth below:

21. Failure to Pay Overtime. Labor Code §510 clearly requires companies to pay overtime for any hours worked in excess of eight (8) hours in one workday and 40 hours in any one work week. Any work in excess of 12 hours must be paid at twice the regular rate of pay. In the most blatant, egregious example of failing to pay overtime, Defendants paid for all hours worked at the Plaintiff's regular rate of pay. Plaintiff was paid for 122 hours during the two-week pay period beginning 8/16/19 and ending 8/31/19. All 122 hours were paid at \$15.75 for a total of \$1,921.50. The 42.5 overtime hours Plaintiff worked during that pay period should have been paid, at minimum, at a rate of \$23.63 for a total of \$1,004.27. Plaintiff should have been paid as follows: $(80 \times \$15.75 = \$1,260) + (42.5 \times \$23.63 = \$1,004.27) = \$2,264.27$. Instead, Plaintiff was paid \$1,921.50. In just one pay period, Plaintiff had \$342.77 in wages stolen. Defendants failure to pay overtime impacted all hourly aggrieved employees. As a result, Plaintiff and others have been denied "the unpaid balance of the full amount of this . . . overtime compensation" as required by Cal. Labor Code §1194. Defendants are liable for civil penalties pursuant to Labor Code §2698 *et seq.*

CO. FILE NO. DEPT. CHECK NO. DATE
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DELANO FARMS COMPANY
111 MARKET ST. NE SUITE 350
OLYMPIA, WA 98501
COMPANY PH# 360-915-5000

Period Beginning: 08/16/2019
Period Ending: 08/31/2019
Pay Date: 09/10/2019

ADP

Taxable Marital Status: Married
Exemptions/Allowances:
Federal: 6
CA: 6

DIANA BERBER
PO BOX 253
DELANO CA 93216

Social Security Number: XXX-XX-XXXX

Earnings	rate	hours	this period	year to date	Other Benefits and Information	this period	total to date
Regular	15.7500	122.00	1,921.50	24,374.58	Company Match	57.65	
Overtime				33.18	Max Eligi/Comp	1,021.50	24,911.74
Holiday				126.00	Safe Harbor	57.65	
Sick				376.00	Zenith Wk Comp	110.08	
Gross Pay			\$1,921.50	24,911.74	Sick Leave Avail		24.00
Deductions					Sick Time Avail		-1.11
Statutory							
Federal Income Tax			-28.38	85.07			
Social Security Tax			-119.14	1,544.53			
Medicare Tax			-27.86	361.22			
CA SUI/SDI Tax			-19.22	249.12			
Other							
401K			-96.08*	1,340.20			
Net Pay			\$1,538.81				
Checking 1			-1,630.81				
Net Check			\$0.00				

* Excluded from federal taxable wages

Your federal taxable wages this period are
\$1,825.42

1 22. Failure to Pay Minimum Wage. Defendants failed to pay Plaintiff and aggrieved
2 employees for all hours worked as a result of Defendants' practice of failing to pay for off-the-
3 clock and overtime hours worked. Based on Defendants' unlawful conduct described above, and
4 because Plaintiff and the aggrieved employees were paid at or near minimum wage, Defendants'
5 failure to pay for all hours worked, including overtime, resulted in a payment of less than the
6 statutory minimum wage for all hours worked, in violation of Labor Code §§218, 510, 1194,
7 1198 and the Industrial Welfare Commission Wage Orders paragraph (3)(A)(1) for failure to pay
8 overtime. Defendants are liable for civil penalties pursuant to Cal. Labor Code §§558 and 2698
9 *et seq.*

10 23. Time Shaving and Rounding. Defendants rounds employee timecard entries to the
11 nearest quarter ($\frac{1}{4}$) hour, although Defendants use a high-tech timekeeping system (utilizing
12 facial recognition) that could easily capture the exact minute employees present for work. This
13 results in underpayment as hours are shaved from time punch entries. The California Supreme
14 Court has rejected the *de minimis* arguments frequently echoed by employers, confirming that
15 employees are entitled to payment for all hours (and minutes) worked. Indeed, California law
16 will permit a "rounding policy only 'if the rounding policy is fair and neutral on its face' and 'it
17 is used in such a manner that it will not result, over a period of time, in failure to compensate the
18 employees properly for all the time they have actually worked.'" (*Troester v. Starbucks*
19 *Corporation*, (2018) 5 Cal. 5th 829, 846, citing *See's Candy*, 210 Cal.App.4th at p. 907.) The
20 policy utilized by Defendants is neither fair nor neutral, as it consistently shaved time from
21 Plaintiff and aggrieved employees' hours worked, resulting in a failure to compensate Plaintiff
22 and aggrieved employees for all hours worked and overtime hours worked.

23 24. Work Performed During Unpaid Meal Periods. As more fully set forth below,
24 Defendants failed to permit Plaintiff and others to take timely, off-duty, first and second meal
25 breaks of "not less than 30 minutes" for each five consecutive hours of work in violation of
26 Labor Code §§226.7 and 512. Plaintiffs and aggrieved employees working in the fields did not
27 clock in and out for meal periods, and 30 minutes was automatically deducted from their
28 timecard regardless of whether and when they took a meal period, if at all. Further, Plaintiff and

1 aggrieved employees working in the fields had a long walk back to the processing facility, which
2 cut into their meal period. As a result of these violations, Defendants are liable for civil penalties
3 pursuant to Labor Code §§558 and 2698 *et seq.*

4 25. Failure to Pay All Wages Owed Twice Per Month. Defendants were required to pay
5 Plaintiff and aggrieved employees all wages earned twice during each calendar month pursuant
6 to Labor Code §204(a). Defendants failed to pay all wages earned to employees as a result of the
7 unlawful employment policies and practices discussed herein. As a result of these practices,
8 Plaintiff and aggrieved employees were underpaid for hours worked, including overtime and
9 penalty wages, and this underpayment resulted in a failure to pay all wages owed twice per
10 month, as more fully set forth below. As a result of these violations, Defendants are liable for
11 civil penalties pursuant to Labor Code §§558 and 2698 *et seq.*

12 **Failure to Timely Pay Final Wages**

13 (Cal. Labor Code §§201, 202, 203, 256, and 2698 *et seq.*)

14 26. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
15 incorporate said paragraphs herein by reference.

16 27. Labor Code section 201 states, in pertinent part, “[i]f an employer discharges an
17 employee, the wages earned and unpaid at the time of discharge are due and payable
18 immediately.” Labor Code section 202 states, in pertinent part, “[i]f an employee not having a
19 written contract for a definite period quits his or her employment, his or her wages shall become
20 due and payable not later than 72 hours thereafter, unless the employee has given 72 hours
21 previous notice of his or her intention to quit, in which case the employee is entitled to his or her
22 wages at the time of quitting.”

23 28. Defendants knowingly and willfully failed to pay Plaintiff and aggrieved employees
24 all compensation due and owing upon separation of employment, including but not limited to, all
25 earned regular and overtime wages. Defendants willfully failed to pay employees who are no
26 longer employed by it all compensation due upon termination of employment as required by Cal.
27 Lab. Code §§201 and 202.

1 29. Plaintiff believes that other employees who separated from the company, whether
2 voluntary or involuntary, were also denied payment of wages in a timely manner as required by
3 §203. Plaintiff seeks civil penalties pursuant to §558 (a)(3) for each violation of §203 and civil
4 penalties under PAGA pursuant to §2698 *et. seq.*, on behalf of the Labor and Workforce and
5 Development Agency (LWDA).

6 30. Pursuant to §203, Plaintiff and similarly situated individuals are now also entitled to
7 recover up to thirty (30) days of wages due to Defendants' "willful" failure to comply with the
8 statutory requirements of §§201 and 202 of the Labor Code. Moreover, because Defendants
9 violated §§201, 202 and 203, Defendants are liable for civil penalties pursuant to Cal. Lab. Code
10 § 2698 *et. seq.*

11 31. Labor Code section 256, in pertinent part, provides that a civil penalty shall be
12 imposed in an amount not exceeding 30 days' pay as waiting time under the terms of Section
13 203.

14 32. Defendants were required to pay Plaintiff and aggrieved employees all wages earned
15 twice during each calendar month pursuant to Labor Code §204(a). Defendants failed to pay all
16 wages earned to employees as a result of the unlawful employment policies and practices
17 discussed herein. As a result of these practices, aggrieved employees were underpaid for hours
18 worked, including overtime and penalty wages, and this underpayment resulted in a failure to
19 pay all wages owed twice per month. As a result of these violations, Defendants are liable for
20 civil penalties pursuant to Cal. Lab. Code §§558 and 2698 *et seq.*

21 **Failure to Provide Rest Breaks and Cool-Down Rest Periods**

22 (Cal. Labor Code §§226(a), 226.7, 512, 558, 1198, 2698 *et seq.*)

23 33. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
24 incorporate said paragraphs herein by reference.

25 34. Defendants have failed to maintain a policy and practice that provides or permits its
26 employees with off-duty rest periods as required by California law. Plaintiff and aggrieved
27 employees regularly worked in excess of four hours, or a major fraction thereof, during work
28 days without being provided any rest break, despite the fact that employees are entitled to at least

1 a ten minute rest period in which they are relieved of all duties, as required by Cal. Lab. Code
2 §§226.7, 512 and Wage Order 5.

3 35. Plaintiff and aggrieved employees who worked in the fields were not provided with
4 potable water, bathrooms, or shade. There were no bathrooms in the field – employees had to
5 relieve themselves in the fields. Labor Code §226.7 requires that employers provide rest periods
6 and cool down rest periods that comply with state laws, including those that require adequate
7 shade, restrooms, and water to employees for use during required break and cool-down rest
8 periods. Plaintiff and aggrieved employees did not receive all required rest breaks. Further, when
9 employees did receive rest breaks, they were not compliant for the following reasons:

10 36. Cool-Down Rest Periods. Defendants discouraged employees from taking cool-down
11 rest breaks, even on summer days when temperatures in the field rose above one hundred (100)
12 degrees Fahrenheit. 8 CCR 3395(d)(3) provides in part that employees working for employers
13 that maintain “outdoor places of employment” shall be allowed and encouraged to take a
14 preventative cool-down rest in the shade when they feel the need to do so to protect themselves
15 from overheating.” Defendants are liable for civil damages under Labor Code §226.7.

16 37. Potable Drinking Water. Defendants failed to comply with state laws regarding rest
17 breaks as required by Labor Code §226.7 because Plaintiff and aggrieved employees were denied
18 sufficient potable water. California Labor Code § 2241 requires employers to provide fresh, free,
19 and pure drinking water for employees, at reasonable and convenient times and places. 8 CCR
20 2295 requires the provision of “potable drinking water meeting the requirements of §§1524,
21 3363, and 3457, as applicable, including but not limited to the requirements that it be fresh, pure,
22 suitably cool, and provided to employees free of charge.” 8 CCR § 3457(c) further requires the
23 provision of potable drinking water and single use cups. Plaintiff and aggrieved employees were
24 not provided with adequate potable drinking water, not nearly sufficient to meet the needs of the
25 large number of employees working throughout the duration of the shift. Pursuant to §2241,
26 “[a]ny violation of this section is punishable for each offense by a fine of not less than fifty
27 dollars (\$50), nor more than two hundred dollars (\$200), or by imprisonment for not more than
28 30 days, or by both the fine and imprisonment.” Pursuant to Cal. Labor Code §6712, “any

1 employer who fails to provide the facilities required by the field sanitation standard shall be
2 assessed a civil penalty . . . of not less than seven hundred fifty dollars (\$750) for each
3 violation.” Defendants are liable for civil penalties pursuant to Labor Code §226.7.

4 38. Adequate Shade. Defendants failed to comply with state laws as required by Labor
5 Code §226.7 because Plaintiff and aggrieved employees were not provided with sufficient shade.
6 8 CCR § 3995(d) requires employers to allow access to shade. The regulations define “shade” as
7 “blockage of direct sunlight.” Defendants failed to provide Plaintiff and aggrieved employees,
8 who worked in the fields, with adequate shade. Labor Code §§6300, 6310, and 6400, *et seq.*
9 requires all employers to provide a safe and secure workplace. Because Defendants did not
10 provide shade required by 8 CCR § 3395 at their “outdoor places of employment,” Plaintiff and
11 aggrieved employees were exposed to a high risk of suffering heat illness and jeopardizing their
12 life, safety, and health. Defendants are liable for extensive damages and PAGA penalties
13 pursuant to Labor Code § 226.7.

14 39. Legally Compliant Bathrooms. Defendants failed to comply with state laws as
15 required by Labor Code §226.7 because employees who worked in the field were not provided
16 with bathrooms, and employees who worked within the facility had to deal with filthy bathroom
17 conditions due to Defendants failure to maintain clean bathrooms. Labor Code §2350 requires
18 employers to provide that “[e]very factory, workshop, mercantile, or other establishment in
19 which one or more persons are employed, shall be kept clean and free from the effluvia arising
20 from any drain or other nuisance, and shall be provided, within reasonable access, with a
21 sufficient number of toilet facilities for the use of the employees.” Defendants violated §2350 by
22 failing to provide and maintain sanitary bathrooms for employees. Defendants further violated 8
23 CCR § 3457(c) by failing to provide adequate toilet and handwashing facilities. Cal. Code Regs.
24 Tit. 8 requires that “[t]oilet facilities shall be, at all times, operational, maintained in a clean and
25 sanitary condition, and kept in good repair. Written records of service and maintenance shall be
26 maintained and retained for two years.” Labor Code §6712 requires toilets to be “serviced and
27 maintained in a clean, sanitary condition and kept in good repair at all times, including written
28 records of that service and maintenance.” Moreover, “any employer who fails to provide the

1 facilities required by the field sanitation standard shall be assessed a civil penalty . . . of not less
2 than seven hundred fifty dollars (\$750) for each violation.” Further, the public policy of the State
3 of California, as codified, expressed and mandated in Labor Code sections 6300, 6310, and 6400,
4 *et seq.*, requires all employers to take reasonable steps to provide a safe and secure workplace.
5 Unfortunately, bathrooms in Defendants’ workplaces were filthy, unsanitary, and noncompliant
6 with minimum standards. Defendants failed to pay Plaintiff and similarly situated employees the
7 premium compensation (one hour of pay at the employee’s regular rate of pay for missed or
8 untimely rest periods) mandated by Labor Code § 226.7(b) for those noncompliant rest periods.
9 Rest period violations occurred daily, however, no rest period penalty pay is listed on the
10 Plaintiff’s paystubs. Pursuant to Labor Code §1198, “the employment of any employee . . . under
11 conditions of labor prohibited by the order is unlawful.” Accordingly, because Defendants
12 violated Wage Order provisions requiring rest breaks, Defendants violated §1198. As a result of
13 these violations, Defendants are liable for civil penalties pursuant to Labor Code §§558 and 2698
14 *et seq.* As a derivative claim, Plaintiff alleges that her pay statements were inaccurate, failing to
15 include required rest period penalties, thus failing the requirements of Labor Code §226(a),
16 resulting in further liability under Cal. Lab. Code §§558 and 2968 *et seq.*

17 **Failure to Provide Timely & Compliant Meal Breaks**

18 (Civil Penalties under Labor Code §§226(a), 226.7, 512, 558, 1198, 2698 *et seq.*)

19 40. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
20 incorporate said paragraphs herein by reference.

21 41. Labor Code §512 provides, “[a]n employer may not employ an employee for a work
22 period of more than five hours per day without providing the employee with a meal period of not
23 less than 30-minutes . . .” Labor Code § 226.7(a) provides, “[n]o employer shall require an
24 employee to work during any meal... period mandated by an applicable order of the Industrial
25 Welfare Commission.” Paragraph 11 of Wage Order 14 provides, in pertinent part, “[u]nless an
26 employee is relieved of all duty during a 30 minute meal period, the meal period shall be
27 considered an ‘on duty’ meal period and counted as time worked.” Pursuant to Labor Code
28 §1198, “the employment of any employee . . . under conditions of labor prohibited by the order
is unlawful.”

1 42. On many occasions, meal periods were frequently late or shortened and were always
2 noncompliant. Employees working in the fields had to walk to the facility for their meal period,
3 and this walking time cut into the 30 minutes that were automatically deducted from their
4 timecards. Moreover, Plaintiff and aggrieved employees were denied sanitary conditions during
5 mandatory meal periods, as described above.

6 43. Plaintiff alleges that although she frequently worked 10-hour shifts, Defendants failed
7 to provide her with her first meal break until substantially into the 6th hour or later. Pursuant to
8 *Brinker Rest. Corp. v. Superior Court*, 53 Cal.4th 1004 ,273 P.3d 313 (2012), a first meal period
9 must begin no later than the start of an employee's sixth hour of work. Plaintiff and aggrieved
10 employees took lunch at a set time, and this set time was late every day, well into the 6th hour of
11 work. Because Defendants did not have employees clock in and out for lunch, there are no
12 records of when meals were taken.

13 44. Defendants failed to permit Plaintiff and aggrieved employees to take timely, off-
14 duty, meal breaks of "not less than 30 minutes" for each five consecutive hours of work in
15 violation of Labor Code §§226.7 and 512. Although meals were routinely late and always
16 noncompliant, Defendants never paid penalty pay to Plaintiff and others. As a derivative claim,
17 Plaintiff alleges that her pay statements were inaccurate, failing to include required meal period
18 penalties, thus failing the requirements of Labor Code §226(a). As a result of these violations,
19 Defendants are liable for civil penalties pursuant to Cal. Labor Code §§558 and 2698 *et. seq.*

20 45. Plaintiff alleges on information and belief that that Defendants' failure to pay
21 aggrieved employees the unpaid balance of these meal period wages upon the termination of
22 their employment, as alleged in this cause of action, was willful, and thus entitles aggrieved
23 employees to penalties under Labor Code §203. Specifically, Labor Code §203 provides that an
24 employee's wages shall continue as a penalty until paid or for a period of up to 30 days from the
25 time they were due, whichever period is shorter.

26 46. Plaintiff seeks penalties pursuant to Labor Code §558 in this representative action for
27 each violation of Labor Code §226.7. Further, as a derivative claim for failing to pay the
28 premium pay of one (1) hour of pay at the employee's regular rate of compensation for each

1 workday that the meal period is not provided, Plaintiff will seek statutory penalties under Labor
2 Code §226(a)(1) because the failure to pay such premium wages rendered gross pay calculations
3 inaccurate in violation of Labor Code §226(e)(2)(B)(i).

4 **Civil Penalties for Failure to Furnish and Maintain Accurate Payroll Records**

5 (Cal. Labor Code §§ 226, 1174, 2698 *et seq.*)

6 47. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
7 incorporate said paragraphs herein by reference.

8 48. California Labor Code §226(a) provides that “[e]very employer shall, semimonthly or
9 at the time of each payment of wages, furnish each of his or her employees...an accurate itemized
10 statement in writing showing (1) gross wages earned, (2) total hours worked..., (3) the number of
11 piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis,
12 (4) all deductions ... , (5) net wages earned, (6) the inclusive dates of period for which the
13 employee is paid, (7) the name of the employee and his or her social security number..., (8) the
14 name and address of the legal entity that is the employer, and (9) all applicable hourly rates in
15 effect during the pay period and the corresponding number of hours worked at each hourly rate
16 by the employee.” (Emphasis added.)

17 49. Labor Code §1174 provides that “[e]very employer employing labor in this state shall
18 ... (c) [k]eep a record showing the names and addresses of all employees employed and the ages
19 of all minors [and] (d) [k]eep at a central location in the state or at the plants or establishments at
20 which employees are employed, payroll records showing the hours worked daily by and the
21 wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to,
22 employees employed at the respective plants or establishments. These records shall be kept in
23 accordance with rules established for this purpose by the commission, but in any case shall be
24 kept on file for not less than two years.”

25 50. Defendants knowingly and intentionally failed to provide timely, accurate, itemized
26 wage statements to Plaintiff and the aggrieved employees, and maintain accurate records, in
27 accordance with Labor Code §§226 and 1174. As a result of the unlawful employment practices
28 discussed herein, Defendants maintained and issued inaccurate wage statements, failing to

1 include required overtime hours worked and misrepresenting actual regular hours on the final
2 wage statement. Further, Defendants failed to include meal and rest period penalties, thus failing
3 the requirements of Labor Code §226(a). Such failures caused injury to Plaintiff and others, by,
4 among other things, impeding them from knowing the total hours worked and the amount of
5 wages to which they are and were entitled.

6 51. Labor Code §226.3 provides, “[a]ny employer who violates subdivision (a) of Section
7 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per
8 employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for
9 each violation in a subsequent citation, for which the employer fails to provide the employee a
10 wage deduction statement or fails to keep the records required in subdivision (a) of Section 226.
11 The civil penalties provided for in this section are in addition to any other penalty provided by
12 law.” Plaintiff seeks penalties as permitted under Labor Code §226 for herself and other
13 aggrieved employees for each violation.

14 52. Through this representative action, Plaintiff will advance the interests of hundreds of
15 current and former employees, such that joinder is impracticable. These current and former
16 employees can be readily be identified through a review of Defendants’ payroll records and the
17 records of the company that handles payroll for Defendants.

18 53. Plaintiff seeks to recover the PAGA civil penalties through a representative action
19 permitted by PAGA and the California Supreme Court in *Arias v. Superior Court* (2009) 46 Cal.
20 4th 969. Therefore, class certification of the PAGA claims brought herein is not required.

21 **FIRST CAUSE OF ACTION**

22 **Against All Defendants for Violation of the Private Attorneys General Act (“PAGA”)**
23 **(California Labor Code §2698 *et seq.*)**

24 54. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
25 incorporate said paragraphs herein by reference.

26 55. Plaintiff is an “aggrieved employee” under PAGA, as she was employed by
27 Defendants during the applicable statutory period and suffered one or more of the Labor Code
28 violations set forth herein. Accordingly, Plaintiff seeks to recover on behalf of herself and all

1 other current and former aggrieved employees of Defendants, the civil penalties provided by
2 PAGA, plus reasonable attorneys' fees and costs.

3 56. Plaintiff seeks to recover the PAGA civil penalties through a representative action
4 permitted by PAGA and the California Supreme Court in *Arias v. Superior Court* (2009) 46 Cal.
5 4th 969. Therefore, class certification of the PAGA claims brought herein is not required.

6 57. Plaintiff seeks civil penalties pursuant to PAGA for violations of the following Labor
7 Code provisions:

- 8 a. Failure to Pay for All Hours Worked, Including Overtime Hours Worked (Cal.
9 Labor Code §§218, 510, 558, 1194, 1197, 1198, 1199, 2698 *et seq.*);
- 10 b. Failure to Timely Pay All Wages Owed (Cal. Labor Code §§201, 202, 203, 256,
11 2698 *et seq.*);
- 12 c. Failure to Provide Rest Breaks (Cal. Labor Code §§226(a), 226.7, 512, 558, 1198,
13 2698 *et seq.*);
- 14 d. Failure to Provide Uninterrupted Meal Breaks (Cal. Labor Code §§226(a), 226.7,
15 512, 558, 1198, 2698 *et seq.*);
- 16 e. Failure to Provide Accurate Itemized Wage Statements and Maintain Accurate
17 Records (Cal. Labor Code §§226, 1174, 1174.5, 2698 *et seq.*).

18 58. With respect to violations of Labor Code §226(a), Labor Code §226.3 imposes a civil
19 penalty in addition to any other penalty provided by law of two hundred fifty dollars (\$250) per
20 aggrieved employee for the first violation, and one thousand dollars (\$1,000) per aggrieved
21 employee for each subsequent violation of Labor Code §226(a).

22 59. With respect to violations of Labor Code §512, Labor Code §558 imposes a civil
23 penalty in addition to any other penalty provided by law of fifty dollars (\$50) for initial
24 violations for each underpaid employee for each pay period for which the employee was
25 underpaid, and one hundred dollars (\$100) for subsequent violations for each underpaid
26 employee for each pay period for which the employee was underpaid.

27 60. Labor Code §2698 *et seq.* imposes a civil penalty of one hundred dollars (\$100) per
28 pay period, per aggrieved employee for initial violations, and two hundred dollars (\$200) per pay

1 period, per aggrieved employee for subsequent violations for all Labor Code provisions for
2 which a civil penalty is not specifically provided.

3 61. Plaintiff and the other current and former employees of Defendants are aggrieved
4 employees. They were or are employed by Defendants, and each of them, and the violations
5 alleged herein were committed against them. Plaintiff brings this action on behalf of herself and
6 all other current and former aggrieved employees.

7 62. At the time of each violation, Defendants employed one or more employees.

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

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

19 **PRAYER FOR RELIEF**

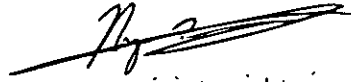
20 WHEREFORE, Plaintiff, individually and on behalf of the aggrieved employees, prays
21 for judgement against Defendants as follows:

- 22 1. An award of civil penalties pursuant to PAGA and the Cal. Labor Code in an amount to be
23 determined at trial, but at least the jurisdictional amount of this Court;
- 24 2. An award of reasonable attorneys' fees and costs pursuant to California Labor Code
25 §2699(g) and/or other applicable law;
- 26 3. For civil penalties as provided under Labor Code §§226.3 and 558, and/or other applicable
27 law;
- 28 4. Pre-judgement and post-judgement interest as provided by law; and

1 5. Such other and further relief that the Court may deem just and proper.

2 DATED: May 26, 2020

3 **KOUL LAW FIRM**
4 **LAW OFFICES OF SAHAG MAJARIAN II**

5 

6
7 BY: Nazo Koulloukian, Esq.
8 Attorneys for Plaintiff DIANA BERBER, and all
9 aggrieved employees
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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

March 19, 2020

Via E-filing:

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

Via Certified U.S. Mail

Delano Farms Company
111 Market Street, NE
Suite 650
Olympia, WA 98501

Re: PAGA Notice Pursuant to California Labor Code §2699
Claimant: Diana Berber
Employers: Delano Farms Company

Dear Sir or Madam:

Claimant Diana Berber has retained Nazo Koulloukian, Esq. and the KOUL LAW FIRM and Sahag Majarian II, Esq. with LAW OFFICES OF SAHAG MAJARIAN II to represent her, and all other aggrieved employees, for wage and hour claims against her former employer Delano Farms Company (referred to as “Employer.”) Employer’s operations are based on planting, picking, and packaging grapes. Employees work long hours in the fields and processing facilities. In the fields, employees lack potable water, restrooms, and shade in addition to many wage and hour related labor code violations. These violations extend to the processing facility, as further outlined below. Ms. Berber began working for Employers in 2014 and continued until September 13, 2019.

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

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

Section 2(G) of Wage Order 14 defines "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 wages at or near minimum wage do not receive payment for all hours worked, the result is that they are earning less than the statutory minimum wages for all hours worked. Employer has been engaged in many unlawful employment practices which resulted in underpayment for hours worked each pay period, including overtime hours worked, including paying overtime hours at the regular rate of pay, shaving time from their timecards due to employer rounding and auto-deducting meal break practices.

Failure to Pay Overtime

Labor Code §510 clearly requires companies to pay overtime for any hours worked in excess of eight hours in one workday and 40 hours in any one workweek. Any work in excess of 12 hours in one day must be paid at twice the regular rate of pay. In the most blatant, egregious example of failing to pay overtime, **Employer here pays for all hours worked at the employee's regular rate of pay.**

As detailed in the earnings statement, below, Claimant was paid for 122 hours during the two week pay period beginning 8/16/19 and ending 8/31/19. All 122 hours were paid at \$15.75 for a total of \$1,921.50.

The 42.5 overtime hours Claimant worked during that pay period should have been paid, a minimum, at a rate of \$23.63 for a total of \$1,004.27.

Claimant should have been paid as follows: $(80 \times \$15.75 = 1,260) + (42.5 \times \$23.63 = 1,004.27) = 2,264.27$. Instead, Claimant was paid \$1,921.50. In just one pay period, claimant had \$342.77 in wages stolen. Shocking.

Employer's failure to pay overtime impacted all hourly aggrieved employees.

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DELANO FARMS COMPANY
111 MARKET ST. NE SUITE 360
OLYMPIA, WA 98501
COMPANY PH# 360-915-5000

Taxable Marital Status: Married
Exemptions/Allowances:
Federal: 6
CA: 6

Social Security Number: XXX-XX-XXXX

Earnings Statement



Period Beginning: 08/16/2019
Period Ending: 08/31/2019
Pay Date: 09/10/2019

DIANA BERBER

PO BOX 253
DELANO WA 98521

Earnings	rate	hours	this period	year to date	Other Benefits and Information	this period	total to date
Regular	15.7500	122.00	1,921.50	24,374.56	Company Match	57.65	
Overtime				33.18	Max Elig/Comp	1,921.50	24,911.74
Holiday				126.00	Safe Harbor	57.65	
Sick				378.00	Zenith Wrk Comp	110.08	
Gross Pay			\$1,921.50	24,911.74	Sick Leave Avail		24.00
Deductions	Statutory				Sick Time Avail		-1.11
	Federal Income Tax		-28.39	85.07			
	Social Security Tax		-119.14	1,544.53			
	Medicare Tax		-27.86	361.22			
	CA SUI/SDI Tax		-19.22	249.12			
	Other						
	401K		-96.08*	1,340.20			
Net Pay			\$1,630.81				
Checking 1			-1,630.81				
Net Check			\$0.00				

* Excluded from federal taxable wages

Your federal taxable wages this period are
\$1,825.42

Failure to Pay Minimum Wage

As set forth above, when employees earning minimum wage do not receive payment for all hours worked, including off-the-clock and overtime hours worked, the result is that they are earning **less than the statutory minimum wages** for all hours worked, in violation of Labor Code §1197. As a result of these practices, Employers have violated Cal. Labor Code §§218, 510, 1194, 1197, 1198 and Industrial Welfare Commission Wage Orders paragraph(3)(A)(1) for failure to pay overtime. Employers are liable for civil penalties pursuant to Cal. Labor Code §558 and 2698 *et seq.*

Time Shaving and Rounding

Employer rounds employee timecard entries to the nearest ¼ hour, although Employer uses a high-tech timekeeping system (utilizing facial recognition) that could easily capture the exact minute employees present for work. This results in underpayment as hours are shaved from time punch entries.

The California Supreme Court has rejected the de minimis argument frequently echoed by employers, confirming that employees are entitled to payment for all hours (and minutes) worked. Indeed, California law will permit a “rounding policy only ‘if the rounding policy is fair and neutral on its face and ‘it is used in such a manner that it will not result, over a period of time, in failure to compensate the employees properly for all the time they have actually worked.’” (*Troester v. Starbucks Corporation*, (2018) 5 Cal. 5th 829, 846, citing *See’s Candy*, 210 Cal.App.4th at p. 907.) The policy utilized by Employer is neither fair nor neutral, as it consistently shaved time from Claimant and aggrieved employees’ hours worked, resulting in a failure to compensate Claimant and aggrieved employees for all hours and overtime hours worked.

Work Performed During Unpaid Meal Periods

As more fully set forth below, Employer failed to permit Claimant and others to take timely, off-duty, first and second meal breaks of “not less than 30 minutes” for each five consecutive hours of work in violation of Labor Code §§226.7 and 512. Employees working in the fields did not clock in and out for meal periods, and 30 minutes was automatically deducted from their timecard regardless of whether and when they took a meal period, if at all. Further, employees working in the fields had a long walk back to the processing facility, which cut into their meal period.

As a result of these violations, Employer is liable for civil penalties pursuant to Cal. Labor Code §558 and §2698 *et. seq.*

Failure to Timely Pay All Wages Owed

(Cal. Lab. Code §§201-203, 256, and 2698 *et seq.*)

Failure to Pay Wages Due Upon Termination

Labor Code section 201 states, in pertinent part, “If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.”

Labor Code section 202 states, in pertinent part, “If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.”

Labor Code section 203 provides that an employee’s wages shall continue as a penalty from when they first become due at the same rate until paid for up to 30 days when an employer willfully fails to timely pay all earned and unpaid wages in accordance with Labor Code section 201 or 202.

Labor Code section 256, in pertinent part, provides that a civil penalty shall be imposed in an amount not exceeding 30 days pay as waiting time under the terms of Section 203.

Employer willfully failed to pay Claimant and aggrieved employees all wages due and owing upon separation of employment including, but not limited all earned regular and overtime wages. By furnishing Claimant and other separated aggrieved employees with a final check that failed to include all earned and owed wages, Employer violated Labor Code sections 201 and/or 202.

Failure to Pay All Wages Owed Twice Per Month

Employer was required to pay Claimant and employee 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.

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 Rest Periods and Cool-Down Rest Periods

(Cal. Labor Code §§226 (a), 226.7, 512, 558, 1198, 2699)

Claimant and her fellow employees regularly worked in excess of four hours, or a major fraction thereof, during work days without being provided at least a ten minute rest period in which she was relieved of all duties, as required by Cal. Lab. Code §226.7, §512 and Wage Orders 13 & 14. Employees, including Claimant, who worked in the fields were not provided with potable water, bathrooms, or shade. There were no bathrooms in the field- employees had to relieve themselves in the fields. Labor Code §226.7 requires that employers provide rest periods and cool down rest periods that comply with state laws, including those that require adequate shade, restrooms, and water to employees for use during required break and cool-down rest periods.

Employee did not receive all required rest breaks. Further, when employees did receive rest breaks, they were not compliant for the following reasons:

Cool-Down Rest Periods

Even on summer days when temperatures in the field rose above one-hundred (100) degrees Fahrenheit, Employer discouraged employees from taking cool-down rest breaks. 8 CCR 3395(d)(3) provides in part that employees working for employers that maintain

“outdoor places of employment” “shall be allowed and encouraged to take a preventative cool-down rest in the shade when they feel the need to do so to protect themselves from overheating.” Employers who fail to provide required recovery periods are liable for damages under Labor Code 226.7.

Potable Drinking Water

Rest breaks did not comply with state laws as required by Labor Code §226.7 because employee were denied sufficient potable water.

California Labor Code §2441 requires employers to provide fresh, free, and pure drinking water for employees, at reasonable and convenient times and places. 8 CCR §3395 requires the provision of “potable drinking water meeting the requirements of §§1524, 3363, and 3457, as applicable, including but not limited to the requirements that it be fresh, pure, suitably cool, and provided to employees free of charge.” 8 CCR § 3457(c) further requires the provision of potable drinking water and single use cups. Claimant and aggrieved employees were not provided with adequate potable drinking water, not nearly sufficient to meet the needs of the large number of employees working throughout the duration of the shift.

Pursuant to §2441, “Any violation of this section is punishable for each offense by a fine of not less than fifty dollars (\$50), nor more than two hundred dollars (\$200), or by imprisonment for not more than 30 days, or by both the fine and imprisonment.” .

Pursuant to Cal. Labor Code §6712, “any employer who fails to provide the facilities required by the field sanitation standard shall be assessed a civil penalty...of not less than seven hundred fifty dollars (\$750) for each violation.”

Labor Code 226.7 requires compliant breaks, and employees may recover PAGA penalties for violation of 226.7.

Adequate Shade

Rest breaks did not comply with state laws as required by Labor Code §226.7 because employees were not provided with sufficient shade. 8 CCR 8, § 3395(d) requires employers to allow access to shade. The regulations define “shade” as “blockage of direct sunlight.” Employer failed to provide Claimant and aggrieved employees, who worked in the fields, with adequate shade.

Labor Code sections 6300, 6310 and 6400, et seq. requires all employers to provide a safe and secure workplace. Because Employer did not provide shade required by 8 CCR 3395 at their “outdoor places of employment,” Claimant and employees were exposed to a high risk of suffering heat illness and jeopardizing their life, safety, and health. Because shade is required, failure to provide adequate shade results in insufficient recovery periods. Damages and PAGA penalties for violation of Labor Code §226.7 are extensive.

Legally Compliant Bathrooms

Rest breaks did not comply with state laws as required by Labor Code §226.7 because field workers were not provided with bathrooms, and employees who worked within the facility had to deal with filthy bathroom conditions due to Employers failure to maintain clean bathrooms.

California Labor Code §2350 requires employers to provides that “[e]very factory, workshop, mercantile or other establishment in which one or more persons are employed, shall be kept clean and free from the effluvia arising from any drain or other nuisance, and shall be provided, within reasonable access, with a sufficient number of toilet facilities for the use of the employees.” Employer violated §2350 by failing to provide and maintain sanitary bathrooms for employees. Employer further violated 8 CCR §3457(c) by failing to provide adequate toilet and handwashing facilities.

Cal. Code Regs. tit. 8, § 3457 requires that “[t]oilet facilities shall be, at all times, operational, maintained in a clean and sanitary condition, and kept in good repair. Written records of service and maintenance shall be maintained and retained for two years.”

Labor Code §6712 requires toilets to be “serviced and maintained in a clean, sanitary condition and kept in good repair at all times, including written records of that service and maintenance.” Moreover, “any employer who fails to provide the facilities required by the field sanitation standard shall be assessed a civil penalty...of not less than seven hundred fifty dollars (\$750) for each violation.” Labor Code §6712. Further, the public policy of the State of California as codified, expressed and mandated in Labor Code sections 6300, 6310 and 6400, et seq. requires all employers to take reasonable steps to provide a safe and secure workplace. Unfortunately, bathrooms in Employer’s workplaces were filthy, unsanitary, and non-compliant with minimum standards.

Employer failed to pay Claimant and similarly situated employees the 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 noncompliant rest periods. Rest period violations occurred daily, however no rest period penalty pay is listed on the above paystub. Pursuant to Labor Code §1198, “the employment of any employee... under conditions of labor prohibited by the order is unlawful.” Accordingly, because Employer violated Wage Order provisions requiring rest breaks, Employer violated §1198. As a result of these violations, Employer is liable for civil penalties pursuant to Cal. Labor Code §558 and §2698 *et. seq.* As a derivative claim, Claimant alleges that her pay statements were inaccurate, failing to include required rest period penalties, thus failing the requirements of Labor Code §226(a), resulting in further liability under Cal. Labor Code §§ 558 and 2698 *et. seq.*

Failure to Provide Timely and Compliant Meal Breaks

(Cal. Labor Code §§226 (a), 226.7, 512, 558, 1198, 2699)

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 of Wage Order 14 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.”

Meal periods were frequently late, shortened, and always noncompliant. Employees in the fields had to walk to the facility for their meal period, and this walking time cut into the 30 minutes that were automatically deducted from their timecards. Moreover, employees were denied sanitary conditions during mandatory meal periods, as describe above.

Claimant claims that although she frequently worked 10 hour shifts, she was not provided her first meal break until substantially into the 6th hour or later. Pursuant to *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 273 P.3d 513 (2012), a first meal period must begin no later than the start of an employee's sixth hour of work. Here, all employees took lunch at a set time, and this set time was late every day, well into the 6th hour of work. Because Employer did not have employees clock in and out for lunch, there are no records of when meals were taken.

Section 11 of Wage Orders 13 & 14 requires employers to authorize and permit employees to take an uninterrupted 30 minute meal period after no more than 5 hours of work. Pursuant to Labor Code §1198, “the employment of any employee... under conditions of labor prohibited by the order is unlawful.” Employer failed to permit Claimant and others 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. Although meals were routinely late and always noncompliant, Employer never paid penalty pay to Claimant, as indicated on her paystub, above. As a derivative claim, Claimant alleges that her 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, Employers are liable for civil penalties pursuant to Cal. Labor Code §558 and §2698 *et. seq.*

Paystub and Record Keeping Violations

(Cal. Lab. Code §§226, 1174, 2699)

Employer knowingly and intentionally failed to provide timely, accurate, itemized wage statements to Claimants and the aggrieved employees, and maintain accurate records, in accordance with Labor Code §§ 226 and 1174.

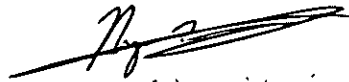
Based on and as a result of the above mentioned Labor Code violations, Employers maintained and issued inaccurate wage statements, failing to include required overtime hours worked and misrepresenting actual regular hours worked on the final wage statement. Employer further failed to include meal and rest period penalties, thus failing the requirements of Labor Code §226(a). 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.

Claimant will seek penalties as permitted under Labor Code §226 for herself and other aggrieved employees for each violation. Further, claimant will seek recovery of civil penalties under Labor Code §226.3, and PAGA, Labor Code §2698, *et seq.*, on behalf of the LWDA against the Employers if authorized to file a representative action on behalf of the State of California for Employers' paystub violations.

Conclusion

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

Respectfully Submitted,



Nazo Koulloukian
KOUL LAW FIRM
Attorneys for Claimant