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Attorneys for Plaintiffs Michael Smith, John Cook, and Guillermo Gonzalez, as individuals, and on behalf of all others similarly situated

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF TULARE**

MICHAEL SMITH; JOHN COOK; and
GUILLERMO GONZALEZ, as
individuals and on behalf of all others
similarly situated

Plaintiff,

vs.

LAND O'LAKES, INC.; and DOES 1
through 20, inclusive,

Defendants.

Case No. VCU282808

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

1. Failure to Pay Minimum Wages;
2. Failure to Pay Overtime Wages;
3. Failure to Pay Reporting Time Pay;
4. Failure to Provide Meal Periods;
5. Failure to Permit Rest Breaks;
6. Failure to Provide Accurate Itemized Wage Statements;
7. Failure to Pay All Wages Due Upon Separation of Employment; and
8. Violation of Business and Professions Code §§ 17200, *et seq.*
9. Violation of California Labor Code Private Attorneys General Act of 2004 (Cal. Labor Code §§ 2698, *et seq.*)
10. Violation of Fair Labor Standards Act (29 U.S.C. § 203)

ELECTRONICALLY FILED
Superior Court of California,
County of Tulare
06/13/2022

By: Brenda Barrios, Deputy Clerk

1 Plaintiffs Michael Smith, John Cook, and Guillermo Gonzalez, as individuals and on
2 behalf of others similarly situated, alleges as follows:

3 **NATURE OF ACTION AND INTRODUCTORY STATEMENT**

4 1. Plaintiffs Michael Smith, John Cook, and Guillermo Gonzalez (“Plaintiffs”)
5 bring this putative class action against defendants Land O’Lakes, Inc., and DOES 1 through 20,
6 inclusive (collectively, “Defendants”), on behalf of themselves individually and on behalf of a
7 putative class of non-exempt hourly production employees directly employed by Defendants at
8 their Tulare, California facility.

9 2. Defendants operate manufacturing centers which process dairy products in
10 Tulare, California.

11 3. Through this action, Plaintiffs allege that Defendants have engaged in a
12 systematic pattern of wage and hour violations under the California Labor Code and Industrial
13 Welfare Commission (“IWC”) Wage Orders, and federal Fair Labor Standards Act (“FLSA”),
14 all of which contribute to Defendants’ deliberate unfair competition.

15 4. Plaintiffs are informed and believes, and thereon alleges, that Defendants have
16 increased their profits by violating state wage and hour laws by, among other things:

- 17 (a) Failing to pay minimum wages;
18 (b) Failing to pay overtime wages;
19 (c) Failing to pay overtime and doubletime wages at the proper rates;
20 (d) Failing to pay Reporting Time Pay;
21 (e) Failing to provide meal periods or compensation in lieu thereof;
22 (f) Failing to authorize or permit rest breaks or provide compensation in lieu thereof;
23 (g) Failing to provide accurate itemized wage statements; and
24 (h) Failing to pay all wages due upon separation of employment.

25 5. For at least four years prior to the filing of this action and through to the present,
26 Defendants consistently maintained and enforced against the class the following
27 unlawful practices and policies, in violation of California state wage and hour laws:
28

1 (a) Defendants forced class members to submit to unpaid “security checks”
2 when leaving the facility at the beginning and end of their shifts and during meal
3 and rest breaks.

4 (b) Although class members were under Defendants’ control while waiting
5 in line for and undergoing these security checks, Defendants did not compensate
6 class members for this time worked.

7 (c) Defendants forced class members to go through these same security
8 checks when leaving for their meal periods. The security checks, coupled with
9 Defendants’ other meal period policies, shorten the Class Members’ meal
10 periods to less than the thirty minutes required under California law. Thus,
11 Defendants have had a policy of requiring Class Members within the State of
12 California, including Plaintiffs, to work at least five (5) hours without a lawful
13 meal period and failing to pay such employees one (1) hour of pay at the
14 employees’ regular rate of compensation for each workday that the full thirty-
15 minute meal period was not provided, as required by California state wage and
16 hour laws.

17 (d) Defendants have failed to pay Reporting Time Pay to employees who
18 would report to work and sent home early without being paid half a day’s
19 wages.

20 (e) Defendants have failed to pay overtime and doubletime wages at the
21 regular rate of pay by failing to account for shift differentials and other earned
22 wages when calculating overtime and doubletime wages.

23 (f) Defendants have required class members to be “on duty” during meal
24 and rest periods such that they have not been provided with legally compliant
25 meal and rest periods under California law.

26 (g) Defendants have failed to provide second meal periods for shifts longer
27 than 10 hours or third rest periods for shifts longer than 10 hours.

28 6. Plaintiffs bring this lawsuit seeking monetary relief against Defendants on

1 behalf of themselves and all others similarly situated in California to recover, among other
2 things, unpaid wages and benefits, interest, attorneys' fees, costs and expenses and penalties
3 pursuant to Labor Code §§ 201-203, 210, 226, 226.7, 510, 512, 1194, 1194.2, 1197, 1198, 2698
4 *et seq.*, and 29 U.S.C. § 201, *et seq.*

5 **JURISDICTION AND VENUE**

6 7. This is a class action, pursuant to California Code of Civil Procedure § 382, a
7 representative action brought under the Private Attorneys General Act of 2004, Cal. Lab. Code
8 § 2698 *et seq.* ("PAGA"), and a collective action under the FLSA, 29 U.S.C. §§ 201 *et seq.*
9 The monetary damages and restitution sought by Plaintiffs exceed the minimal jurisdictional
10 limits of the Superior Court and will be established according to proof at trial.

11 8. This Court has jurisdiction over this action pursuant to the California
12 Constitution, Article VI, § 10, which grants the Superior Court original jurisdiction in all
13 causes except those given by statutes to other courts. The statutes under which this action is
14 brought do not specify any other basis for jurisdiction.

15 9. This Court has jurisdiction over all Defendants because, upon information and
16 belief, they are citizens of California, have sufficient minimum contacts in California or
17 otherwise intentionally avail themselves of the California market so as to render the exercise of
18 jurisdiction over them by the California courts consistent with traditional notions of fair play
19 and substantial justice.

20 10. Venue is proper in this Court because, upon information and belief, Defendants
21 reside, transact business or have offices in this county and the acts and omissions alleged herein
22 took place in this county.

23 **THE PARTIES**

24 11. Plaintiffs are citizens of California. Plaintiffs were employed by Defendants
25 during the Class Period and FLSA Class Period in California.

26 12. Plaintiffs are informed and believe, and thereon alleges, that Defendants at all
27 times hereinafter mentioned, were and are employers as defined in and subject to the Labor
28 Code and IWC Wage Orders, and the FLSA, whose employees were and are engaged

1 throughout this county and the State of California.

2 13. Plaintiffs are unaware of the true names or capacities of the defendants sued
3 herein under the fictitious names DOES 1 through 20, but will seek leave of this Court to
4 amend this Complaint and serve such fictitiously named defendants once their names and
5 capacities become known.

6 14. Plaintiffs are informed and believe, and thereon alleges, that each defendant
7 acted in all respects pertinent to this action as the agent of the other defendant, carried out a
8 joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each
9 defendant are legally attributable to the other defendant. Furthermore, defendants in all
10 respects acted as the employer and/or joint employer of Plaintiffs and the class members.

11 15. Plaintiffs are informed and believe, and thereon alleges, that each and all of the
12 acts and omissions alleged herein were performed by, or are attributable to, Defendants and/or
13 DOES 1 through 20, acting as the agent or alter ego for the other, with legal authority to act on
14 the other's behalf. The acts of any and all Defendants were in accordance with, and represent,
15 the official policy of Defendants.

16 16. At all relevant times, Defendants, and each of them, acted within the scope of
17 such agency or employment, or ratified each and every act or omission complained of herein.
18 At all relevant times, Defendants, and each of them, aided and abetted the acts and omissions of
19 each and all the other Defendants in proximately causing the damages herein alleged.

20 17. Plaintiffs are informed and believe, and thereon alleges, that each of said
21 Defendants is in some manner intentionally, negligently or otherwise responsible for the acts,
22 omissions, occurrences and transactions alleged herein.

23 **CLASS ACTION ALLEGATIONS**

24 18. Plaintiffs bring this action under Code of Civil Procedure § 382 on behalf of
25 himself and all others similarly situated who were affected by Defendants' Labor Code,
26 Business and Professions Code §§ 17200 and IWC Wage Order violations.

27 19. All claims alleged herein arise under California law for which Plaintiffs seek
28 relief authorized by California law.

1 20. Plaintiffs' proposed Class consists of and is defined as follows:

2 Class

3 All California citizens currently or formerly directly employed as non-exempt
4 hourly production employees by Defendants at their Tulare, California facility
 within four years prior to the filing of this action to the date of class certification.

5 21. Plaintiffs also seek to certify the following Subclass of employees:

6 Waiting Time Subclass

7 All members of the Class who separated their employment from Defendants
8 within three years prior to the filing of this action to the date of class certification.

9 22. Members of the Class and Subclass described above will be collectively referred
10 to as "class members." Plaintiffs reserve the right to establish other or additional subclasses, or
11 modify any Class or Subclass definition, as appropriate based on investigation, discovery and
12 specific theories of liability.

13 23. This action has been brought and may properly be maintained as a class action
14 under the California Code of Civil Procedure § 382 because there are common questions of law
15 and fact as to the Class that predominate over questions affecting only individual members
16 including, but not limited to:

- 17 (a) Whether Defendants paid Plaintiffs and class members all minimum wage
18 compensation;
- 19 (b) Whether Defendants paid Plaintiffs and class members all overtime compensation;
- 20 (c) Whether Defendants paid Plaintiffs and class members all overtime and
21 doubletime compensation at the proper rates;
- 22 (d) Whether Defendants paid Plaintiffs and class members all Reporting Time Pay;
- 23 (e) Whether Defendants deprived Plaintiffs and class members of compliant meal
24 periods or required Plaintiffs and class members to work through meal periods
25 without compensation;
- 26 (f) Whether Defendants deprived Plaintiffs and class members of compliant rest
27 breaks;
- 28 (g) Whether Defendants failed to timely pay Plaintiffs and former class members all

wages due upon termination or within 72 hours of resignation;

(h) Whether Defendants failed to furnish Plaintiffs and class members with accurate, itemized wage statements; and

(i) Whether Defendants engaged in unfair business practices in violation of Business & Professions Code §§ 17200, *et seq.*;

(j) Whether Defendants engaged in improper record keeping and payment practices in violation of the Fair Labor Standards Act, 29 U.S.C. § 203.

24. There is a well-defined community of interest in this litigation and the Class is readily ascertainable:

(a) Numerosity: The members of the Class are so numerous that joinder of all members is impractical. Although the members of the Class are unknown to Plaintiffs at this time, on information and belief, the Class is estimated to be greater than 100 individuals. The identity of the class members are readily ascertainable by inspection of Defendants' employment and payroll records.

(b) Typicality: The claims (or defenses, if any) of Plaintiffs are typical of the claims (or defenses, if any) of the Class because Defendants' failure to comply with the provisions of California wage and hour laws and the FLSA entitled each class member to similar pay, benefits and other relief. The injuries sustained by Plaintiffs are also typical of the injuries sustained by the Class because they arise out of and are caused by Defendants' common course of conduct as alleged herein.

(c) Adequacy: Plaintiffs are qualified to, and will fairly and adequately represent and protect the interests of all members of the Class because it is in their best interest to prosecute the claims alleged herein to obtain full compensation and penalties due to him and the Class. Plaintiffs' attorneys, as proposed class counsel, are competent and experienced in litigating large employment class actions and are versed in the rules governing class action

1 discovery, certification and settlement. Plaintiffs have incurred and,
2 throughout the duration of this action, will continue to incur attorneys' fees
3 and costs that have been and will be necessarily expended for the
4 prosecution of this action for the substantial benefit of each class member.

5 (d) Superiority: The nature of this action makes the use of class action
6 adjudication superior to other methods. A class action will achieve
7 economies of time, effort and expense as compared with separate lawsuits,
8 and will avoid inconsistent outcomes because the same issues can be
9 adjudicated in the same manner and at the same time for each Class. If
10 appropriate this Court can, and is empowered to, fashion methods to
11 efficiently manage this case as a class action.

12 (e) Public Policy Considerations: Employers in the State of California and
13 other states violate employment and labor laws every day. Current
14 employees are often afraid to assert their rights out of fear of direct or
15 indirect retaliation. Former employees are fearful of bringing actions
16 because they believe their former employers might damage their future
17 endeavors through negative references and/or other means. Class actions
18 provide the class members who are not named in the complaint with a
19 type of anonymity that allows for the vindication of their rights at the
20 same time as affording them privacy protections.

21 **FLSA COLLECTIVE ACTION ALLEGATIONS**

22 20. Plaintiffs bring the Tenth Cause of Action below, for violations of the Fair Labor
23 Standards Act (FLSA), as a collective action pursuant to FLSA Section 16(b), 29 U.S.C. §201, et
24 seq. on behalf of all non-exempt hourly production employees who were and/or are directly
25 employed by Defendants at their Tulare, California facility ("FLSA Covered Employees"), on or
26 after the date that is three years before the filing of the Complaint in this case ("FLSA Class
27 Period").
28

21. At all relevant times, Plaintiffs and the other FLSA Covered Employees are and have been similarly situated and have been subject to Defendants' common practices, policies, programs, procedures, protocols and plans of willfully failing and refusing to pay them minimum and overtime wages for all their hours worked and properly calculate overtime wages owed, and willfully failing to keep records required by the FLSA. The claims of Plaintiffs stated herein are similar to those of the other FLSA Covered Employees.

22. The Claim for Relief is properly brought and maintained as an opt-in collective action pursuant to section 16(b) of the FLSA, 29 U.S.C. § 201, *et seq.* The FLSA Covered Employees are readily ascertainable. For purposes of notice and other purposes related to this action, their names and addresses are readily available from Defendants. Notice can be provided to the FLSA Collective Plaintiffs via first class mail to the last address known to their employer.

GENERAL ALLEGATIONS

25. At all relevant times mentioned herein, Defendants employed Plaintiffs and other persons as non-exempt employees at their California manufacturing centers.

26. Plaintiffs were employed as non-exempt hourly production employees at Defendants' Tulare, California facility.

27. Defendants continue to employ non-exempt hourly production employees at their Tulare, California facility.

28. Plaintiffs are informed and believe, and thereon alleges, that at all times herein mentioned, Defendants were advised by skilled lawyers, employees and other professionals who were knowledgeable about California's wage and hour laws, employment and personnel practices and the requirements of California law and the FLSA.

29. Plaintiffs are informed and believe, and thereon alleges, that Defendants failed to pay all overtime wages owed and improperly calculated the overtime and doubletime rate of pay for Plaintiffs and Class Members because the rates did not include non-discretionary wages, including, but not limited to, shift premiums, and/or other incentive pay into the computation of their regular rate of pay for purposes of calculating the overtime and doubletime rate of pay.

1 30. Plaintiffs are informed and believe, and thereon alleges, that Defendants failed
2 to pay all Reporting Time Pay when Plaintiffs and Class Members would report to work on the
3 day of their scheduled shift, and Defendants failed to put Plaintiffs and Class Members to work
4 or furnished less than half of their usual day's work, and did not pay them Reporting Time Pay.

5 31. Upon information and belief, Defendants failed to provide Plaintiffs and class
6 members timely, uninterrupted, off-duty meal periods of no less than thirty minutes before their
7 fifth hour of work. Based on the lack of proper coverage and scheduling of meal periods
8 during these employees' shifts, Plaintiffs and class members were not able to take required off-
9 duty meal periods during their shifts. Defendants also required class members to be "on duty"
10 during meal and rest periods such that they have not been provided with legally compliant meal
11 and rest periods under California law. Defendants routinely failed to provide Plaintiffs and
12 class members with a second, off-the-clock meal break for shifts lasting longer than ten hours.
13 These policies, among others, have resulted in a denial of these employees' rights to 30-minute
14 meal periods in violation of California law.

15 32. Plaintiffs are informed and believe, and thereon alleges, that Defendants knew
16 or should have known that, Plaintiffs and class members were entitled to receive all required
17 meal periods or payment of one (1) additional hour of pay at Plaintiffs' and class members'
18 regular rate of pay when they did not receive a timely meal period. In violation of the Labor
19 Code and IWC Wage Orders, and the FLSA, Plaintiffs and class members did not receive all
20 timely meal periods or payment of one (1) additional hour of pay at Plaintiffs' and class
21 members' regular rate of pay when they did not receive a timely, uninterrupted meal periods.

22 33. Upon information and belief, Defendants failed to provide Plaintiffs and class
23 members timely, uninterrupted, on-the-clock rest period of no less than ten minutes for every
24 four hours worked, or every major fraction thereof. Defendants also routinely failed to provide
25 Plaintiffs and class members with a third rest period for shifts lasting longer than ten hours.
26 These policies, among others, have resulted in a denial of these employees' rights to a ten-
27 minute rest period in violation of California law.

28 34. Plaintiffs are informed and believe, and thereon alleges, that Defendants knew

1 or should have known that, Plaintiffs and class members were entitled to receive all rest breaks
2 or payment of one (1) additional hour of pay at Plaintiffs and class members' regular rate of
3 pay when a rest break was missed. In violation of the Labor Code and IWC Wage Orders,
4 Plaintiffs and class members did not receive all rest breaks or payment of one (1) additional
5 hour of pay at Plaintiffs' and class members' regular rate of pay when a rest break was missed.

6 35. Plaintiffs are informed and believe, and thereon alleges, that Defendants knew
7 or should have known that Plaintiffs and class members were entitled to receive itemized wage
8 statements that accurately showed their gross and net wages earned, inclusive dates of pay
9 periods, total hours worked and all applicable hourly rates in effect and the number of hours
10 worked at each hourly rate in accordance with California law. In violation of the Labor Code,
11 Plaintiffs and class members were not provided with accurate itemized wage statements.

12 36. Plaintiffs are informed and believe, and thereon alleges, that Defendants knew
13 or should have known that Plaintiffs and Waiting Time Subclass members were entitled to
14 timely payment of wages due upon separation of employment. In violation of the Labor Code,
15 Plaintiffs and Waiting Time Subclass members did not receive payment of all wages within
16 permissible time periods.

17 37. Plaintiffs are informed and believe, and thereon alleges, that Defendants knew
18 or should have known they had a duty to compensate Plaintiffs and class members, and
19 Defendants had the financial ability to pay such compensation but willfully, knowingly and
20 intentionally failed to do so all in order to increase Defendants' profits.

21 **FIRST CAUSE OF ACTION**

22 **FAILURE TO PAY MINIMUM WAGES**

23 **(Violation of Labor Code §§ 1194, 1194.2, and 1197; Violation of IWC Wage Order § 3)**

24 38. Plaintiffs hereby re-allege and incorporate by reference all paragraphs above as
25 though fully set forth herein.

26 39. Labor Code §§ 1194 and 1197 provide that the minimum wage for employees
27 fixed by the IWC is the minimum wage to be paid to employees, and the payment of a lesser
28 wage than the minimum so fixed is unlawful.

1 40. During the relevant time period, Defendants paid Plaintiffs and class members
2 less than minimum wages when, for example, Defendants required Plaintiffs and class
3 members to work off-the-clock during meal breaks, during security checks when Plaintiffs and
4 class members were under Defendants' control, and when Defendants failed to provide
5 Plaintiffs and class members with required Reporting Time Pay. To the extent these hours do
6 not qualify for the payment of overtime or doubletime, Plaintiffs and class members were not
7 being paid at least minimum wage for their work.

8 41. During the relevant time period, Defendants regularly failed to pay at least
9 minimum wage to Plaintiffs and class members for all hours worked pursuant to Labor Code
10 §§ 1194 and 1197.

11 42. Defendants' failure to pay Plaintiffs and class members the minimum wage as
12 required violates Labor Code §§ 1194 and 1197. Pursuant to these sections, Plaintiffs and class
13 members are entitled to recover the unpaid balance of their minimum wage compensation as
14 well as interest, costs and attorney's fees.

15 43. Pursuant to Labor Code § 1194.2, Plaintiffs and class members are entitled to
16 recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest
17 thereon for violations arising from work performed for Defendants.

18 **SECOND CAUSE OF ACTION**

19 **FAILURE TO PAY OVERTIME WAGES**

20 **(Violation of Labor Code §§ 510, 1194 and 1198; Violation of IWC Wage Order)**

21 44. Plaintiffs hereby re-alleges and incorporates by reference all paragraphs above
22 as though fully set forth herein.

23 45. Labor Code § 1198 and the applicable IWC Wage Order provide that it is
24 unlawful to employ persons without compensating them at a rate of pay either one and one-half
25 or two times the person's regular rate of pay, depending on the number of hours worked by the
26 person on a daily or weekly basis.

27 46. Pursuant to California Labor Code §§ 510 and 1194, during the relevant time
28 period, Defendants were required to compensate Plaintiffs and class members for all overtime

1 hours worked, calculated at one and one-half (1½) times the regular rate of pay for hours
2 worked in excess of eight (8) hours per day and/or forty (40) hours per week and for the first
3 eight (8) hours of the seventh consecutive work day, with doubletime after eight (8) hours on
4 the seventh day of any work week, or after twelve (12) hours in any work day.

5 47. Plaintiffs and class members were non-exempt employees entitled to the
6 protections of California Labor Code §§ 510 and 1194 for work performed for Defendants.

7 48. During the relevant time period, Defendants failed to pay Plaintiffs and class
8 members all overtime wages owed and overtime and doubletime wages at the correct rate
9 because they failed to include non-discretionary wages, including, but not limited to, shift
10 premiums, and/or other incentive pay in the computation of their overtime and doubletime rate
11 of pay, which caused Plaintiffs and Class Members to not be paid all overtime and doubletime
12 wages owed. Defendants failed to pay Plaintiffs and class members overtime and doubletime
13 wages for all overtime hours worked when, for example, they required Plaintiffs and class
14 members to work off-the-clock during meal breaks, or for work performed during off-the-clock
15 security checks, and when Defendants failed to provide Reporting Time Pay. Because
16 Plaintiffs and class members worked shifts of eight hours or more, and twelve hours or more,
17 this unpaid time qualified for overtime premium payment, and doubletime premium payment.

18 49. In violation of state law, Defendants have knowingly and willfully refused to
19 perform their obligations and compensate Plaintiffs and class members for all wages earned as
20 alleged above.

21 50. Defendants' failure to pay Plaintiffs and class members the unpaid balance of
22 overtime and doubletime compensation, as required by California law, violates the provisions
23 of Labor Code §§ 510 and 1198, and is therefore unlawful.

24 Pursuant to Labor Code § 1194, Plaintiffs and class members are entitled to
25 recover their unpaid overtime and doubletime compensation as well as interest, costs and
26 attorneys' fees.

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1 **THIRD CAUSE OF ACTION**

2 **FAILURE TO PAY REPORTING TIME PAY**

3 **(Violation of IWC Wage Order)**

4 51. Plaintiffs re-allege and incorporate herein by this reference each and every
5 allegation set forth in all previous paragraphs of the Complaint as if fully set forth herein.

6 52. Section 5 of the applicable IWC Wage Order requires that on each workday that
7 an employee reports for work as scheduled but is not put to work or is furnished less than half
8 of the employee's usual or scheduled day's work, the employee shall be paid for half the usual
9 or scheduled day's work, but in no event for less than two (2) hours nor more than four (4)
10 hours at the employee's regular rate of pay, which shall not be less than the minimum wage.
11 Section 5 of the applicable Wage Order denominates this as "Reporting Time Pay."

12 53. During the Class Period, Plaintiffs and the Class were required to report to work
13 but were not put to work and would be sent home early. Accordingly, for those times that
14 Plaintiffs and the Class were required to report to work but were not put to work or were
15 furnished with less than half of their usual scheduled day's work, Plaintiffs and the rest of the
16 Class are entitled to recover from Defendants compensation for half a day's work, plus interest
17 thereon, together with their reasonable attorneys' fees and costs.

18 **FOURTH CAUSE OF ACTION**

19 **FAILURE TO PROVIDE MEAL PERIODS**

20 **(Violation of Labor Code §§ 226.7 and 512; Violation of IWC Wage Order)**

21 54. Plaintiffs hereby re-allege and incorporates by reference all paragraphs above as
22 though fully set forth herein.

23 55. Labor Code § 226.7 provides that no employer shall require an employee to work
24 during any meal period mandated by the IWC Wage Orders.

25 56. Section 11 of the applicable IWC Wage Order states, "no employer shall employ
26 any person for a work period of more than five (5) hours without a meal period of not less than
27 30 minutes, except that when a work period of not more than six (6) hours will complete the
28 day's work the meal period may be waived by mutual consent of the employer and the

1 employee.”

2 57. Labor Code § 512(a) provides that an employer may not require, cause or permit
3 an employee to work for a period of more than five (5) hours per day without providing the
4 employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if
5 the total work period per day of the employee is not more than six (6) hours, the meal period
6 may be waived by mutual consent of both the employer and the employee.

7 58. Labor Code § 512(a) also provides that an employer may not employ an
8 employee for a work period of more than ten (10) hours per day without providing the employee
9 with a second meal period of not less than thirty (30) minutes, except that if the total hours
10 worked is no more than twelve (12) hours, the second meal period may be waived by mutual
11 consent of the employer and the employee only if the first meal period was not waived.

12 59. During the relevant time period, Plaintiffs and class members did not receive
13 compliant meal periods for each five hours worked per day as a result of, among other things,
14 lack of proper coverage and scheduling of meal periods during these employees’ shifts.
15 Defendants have also required class members to be “on duty” during meal and rest periods such
16 that they have not been provided with legally compliant meal and rest periods under California
17 law. Finally, Defendants also routinely failed to provide Plaintiffs and class members with a
18 second, off-the-clock meal break for shifts lasting longer than ten hours.

19 60. Labor Code § 226.7(b) and section 11 of the applicable IWC Wage Order require
20 an employer to pay an employee one additional hour of pay at the employee’s regular rate of
21 compensation for each work day that a meal period is not provided.

22 61. At all relevant times, Defendants failed to pay Plaintiffs and class members all
23 meal period premiums due for meal period violations pursuant to Labor Code § 226.7(b) and
24 section 11 of the applicable IWC Wage Order.

25 62. As a result of Defendants’ failure to pay Plaintiffs and class members an
26 additional hour of pay for each day a meal period was not provided, Plaintiffs and class
27 members suffered and continue to suffer a loss of wages and compensation.

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1 **FIFTH CAUSE OF ACTION**

2 **FAILURE TO PERMIT REST BREAKS**

3 **(Violation of Labor Code §§ 226.7; Violation of IWC Wage Order)**

4 63. Plaintiffs hereby re-allege and incorporates by reference all paragraphs above as
5 though fully set forth herein.

6 64. Labor Code § 226.7(a) provides that no employer shall require an employee to
7 work during any rest period mandated by the IWC Wage Orders.

8 65. Section 12 of the applicable IWC Wage Order states “every employer shall
9 authorize and permit all employees to take rest periods, which insofar as practicable
10 shall be in the middle of each work period” and the “authorized rest period time shall be
11 based on the total hours worked daily at the rate of ten (10) minutes net rest time per
12 four (4) hours or major fraction thereof” unless the total daily work time is less than
13 three and one-half (3½) hours.

14 66. During the relevant time period, Plaintiffs and class members did not receive a
15 ten (10) minute rest period for every four (4) hours or major fraction thereof worked.

16 67. Labor Code § 226.7(b) and section 12 of the applicable IWC Wage Order
17 requires an employer to pay an employee one additional hour of pay at the employee’s regular
18 rate of compensation for each workday that the rest period is not provided.

19 68. At all relevant times, Defendants failed to pay Plaintiffs and class members all
20 rest period premiums due for rest period violations pursuant to Labor Code § 226.7(b) and
21 section 12 of the applicable IWC Wage Order.

22 69. As a result of Defendants’ failure to pay Plaintiffs and class members an
23 additional hour of pay for each day a rest period was not provided, Plaintiffs and class members
24 suffered and continue to suffer a loss of wages and compensation.

25 **SIXTH CAUSE OF ACTION**

26 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

27 **(Violation of Labor Code § 226; Violation of IWC Wage Order)**

28 70. Plaintiffs hereby re-allege and incorporates by reference all paragraphs above as

1 though fully set forth herein.

2 71. Labor Code § 226(a) requires Defendants to provide each employee with an accurate
3 wage statement in writing showing nine pieces of information, including: (1) gross wages
4 earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and
5 any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions,
6 provided that all deductions made on written orders of the employee may be aggregated and
7 shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the
8 employee is paid, (7) the name of the employee and the last four digits of his or her social
9 security number or an employee identification number other than a social security number, (8)
10 the name and address of the legal entity that is the employer, and (9) all applicable hourly rates
11 in effect during the pay period and the corresponding number of hours worked at each hourly
12 rate by the employee.

13 72. During the relevant time period, Defendants have knowingly and intentionally
14 failed to comply with Labor Code § 226(a) on wage statements that were provided to Plaintiffs
15 and class members. The deficiencies include, among other things, the failure to correctly state
16 the gross and net wages earned, accurate inclusive dates of the pay period, and all applicable
17 hourly rates in effect and the number of hours worked at each hourly rate by Plaintiffs and class
18 members.

19 73. As a result of Defendants' violation of California Labor Code § 226(a),
20 Plaintiffs and class members have suffered injury and damage to their statutorily protected
21 rights. Specifically, Plaintiffs and class members have been injured by Defendants' intentional
22 violation of California Labor Code § 226(a) because they were denied both their legal right to
23 receive, and their protected interest in receiving, accurate itemized wage statements under
24 California Labor Code § 226(a). Plaintiffs have had to file this lawsuit in order to determine
25 the extent of the underpayment of wages, thereby causing Plaintiffs to incur expenses and lost
26 time. Plaintiffs would not have had to engage in these efforts and incur these costs had
27 Defendants provided the accurate wages earned. This has also delayed Plaintiffs' ability to
28 demand and recover the underpayment of wages from Defendants.

74. California Labor Code § 226(a) requires an employer to pay the greater of all actual damages or fifty dollars (\$50.00) for the initial pay period in which a violation occurred, and one hundred dollars (\$100.00) per employee for each violation in subsequent pay periods, plus attorney's fees and costs, to each employee who was injured by the employer's failure to comply with California Labor Code § 226(a).

75. Defendants' violations of California Labor Code § 226(a) prevented Plaintiffs and class members from knowing, understanding and disputing the wages paid to them, and resulted in an unjustified economic enrichment to Defendants. As a result of Defendants' knowing and intentional failure to comply with California Labor Code § 226(a), Plaintiffs and class members have suffered an injury, and the exact amount of damages and/or penalties is all in an amount to be shown according to proof at trial.

76. Plaintiffs and class members are also entitled to injunctive relief under California Labor Code § 226(h), compelling Defendants to comply with California Labor Code § 226, and seek the recovery of attorneys' fees and costs incurred in obtaining this injunctive relief.

SEVENTH CAUSE OF ACTION

FAILURE TO PAY ALL WAGES DUE UPON SEPARATION OF EMPLOYMENT AND

WITHIN THE REQUIRED TIME

(Violation of Labor Code §§ 201, 202 and 203; Violation of IWC Wage Order)

77. Plaintiffs hereby re-allege and incorporates by reference all paragraphs above as though fully set forth herein.

78. California Labor Code §§ 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his employment, his wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his intention to quit, in which case the employee is entitled to his wages at the time of quitting.

79. During the relevant time period, Defendants willfully failed to pay Plaintiffs and

1 Waiting Time Subclass members all their earned wages upon termination including, but not
2 limited to, proper minimum wages, Reporting Time Pay, and overtime and doubletime
3 compensation, either at the time of discharge or within seventy-two (72) hours of their leaving
4 Defendants' employ.

5 80. Defendants' failure to pay Plaintiffs and Waiting Time Subclass members all
6 their earned wages at the time of discharge or within seventy-two (72) hours of their leaving
7 Defendants' employ is in violation of Labor Code §§ 201 and 202.

8 81. California Labor Code § 203 provides that if an employer willfully fails to pay
9 wages owed immediately upon discharge or resignation in accordance with Labor Code §§ 201
10 and 202, then the wages of the employee shall continue as a penalty from the due date at the
11 same rate until paid or until an action is commenced; but the wages shall not continue for more
12 than thirty (30) days.

13 82. Plaintiffs and Waiting Time Subclass members are entitled to recover from
14 Defendants the statutory penalty which is defined as Plaintiffs' and Waiting Time Subclass
15 members' regular daily wages for each day they were not paid, at their regular hourly rate of
16 pay, up to a thirty (30) day maximum pursuant to Labor Code § 203.

17 **EIGHTH CAUSE OF ACTION**

18 **VIOLATION OF BUSINESS AND PROFESSIONS CODE §§ 17200, ET SEQ.**

19 83. Plaintiffs hereby re-allege and incorporates by reference all paragraphs above as
20 though fully set forth herein.

21 84. Defendants' conduct, as alleged herein, has been and continues to be unfair,
22 unlawful and harmful to Plaintiffs and class members. Plaintiffs seek to enforce important
23 rights affecting the public interest within the meaning of Code of Civil Procedure § 1021.5.

24 85. Defendants' activities, as alleged herein, violate California law and constitute
25 unlawful business acts or practices in violation of California Business and Professions Code
26 §§ 17200, *et seq.*

27 86. A violation of Business and Professions Code §§ 17200, *et seq.* may be predicated on
28 the violation of any state or federal law.

1 87. Defendants' policies and practices have violated the FLSA by failing to
2 compensate Plaintiffs and class members with all required minimum wage and overtime wages.

3 88. Defendants' policies and practices have violated state law in at least the
4 following respects:

5 (a) Failing to pay all minimum wages owed to Plaintiffs and class members
6 in violation of Labor Code §§ 1194.2, and 1197;

7 (b) Failing to pay all overtime and doubletime wages at the proper rate to
8 Plaintiffs and class members in violation of Labor Code §§ 510, 1194
9 and 1198;

10 (c) Failing to pay all Reporting Time Pay in violation of Section 5 of the
11 applicable IWC Wage Order;

12 (d) Failing to provide timely meal periods without paying Plaintiffs and
13 class members premium wages for every day said meal periods were not
14 provided in violation of Labor Code §§ 226.7 and 512;

15 (e) Failing to authorize or permit rest breaks without paying Plaintiffs and
16 class members premium wages for every day said rest breaks were not
17 authorized or permitted in violation of Labor Code § 226.7;

18 (f) Failing to provide Plaintiffs and class members with accurate itemized
19 wage statements in violation of Labor Code § 226; and

20 (e) Failing to timely pay all earned wages to Plaintiffs and Waiting Time
21 Subclass members upon separation of employment in violation of Labor
22 Code §§ 201, 202 and 203.

23 89. Defendants intentionally avoided paying Plaintiffs and class members' wages
24 and monies, thereby creating for Defendants an artificially lower cost of doing business in
25 order to undercut their competitors and establish and gain a greater foothold in the marketplace.

26 90. Pursuant to Business and Professions Code §§ 17200, *et seq.* Plaintiffs and class
27 members are entitled to restitution of the wages unlawfully withheld and retained by
28 Defendants during a period that commences four years prior to the filing of the Complaint; an

1 award of attorneys' fees pursuant to Code of Civil Procedure § 1021.5 and other applicable
2 laws; and an award of costs.

3 **NINTH CAUSE OF ACTION**

4 **ENFORCEMENT OF LABOR CODE § 2698 ET SEQ. ("PAGA")**

5 91. Plaintiffs hereby re-allege and incorporates by reference all paragraphs above as
6 though fully set forth herein.

7 92. Pursuant to Labor Code § 2699(a), any provision of the Labor Code that
8 provides for a civil penalty to be assessed and collected by the Labor and Workforce
9 Development Agency ("LWDA") or any of its departments, divisions, commissions, boards,
10 agencies or employees for violation of the code may, as an alternative, be recovered through a
11 civil action brought by an aggrieved employee on behalf of himself or herself and other current
12 or former employees pursuant to the procedures specified in Labor Code § 2699.3.

13 93. For all provisions of the Labor Code except those for which a civil penalty is
14 specifically provided, Labor Code § 2699(f) imposes upon Defendants a penalty of one
15 hundred dollars (\$100.00) for each aggrieved employee per pay period for the initial violations
16 and two hundred dollars (\$200.000) for each aggrieved employee per pay period for each
17 subsequent pay period in which Defendants violated these provisions of the Labor Code.

18 94. The Private Attorneys General Act applies to time Plaintiffs and class members
19 spent performing work for Defendants.

20 95. Defendants' conduct with respect to Plaintiffs and other aggrieved employees
21 violates numerous Labor Code sections including, but not limited to, the following:

- 22 a. Violation of Labor Code §§ 201-204, 210, 226, 226.3, 226.7, 510, 512, 558,
23 1174, 1174.5, 1194, 1197, 1198, and the IWC Wage Orders for failure to
24 timely pay all earned wages (including minimum wages, overtime wages,
25 and reporting time pay) owed to Plaintiffs and other aggrieved employees
26 during employment and upon separation of employment as herein alleged;
27
28

- 1 b. Violation of Labor Code §§ 226.7 and 512 for failure to provide meal
2 periods to Plaintiffs and other aggrieved employees and failure to pay
3 premium wages for missed meal periods as herein alleged;
- 4 c. Violation of Labor Code § 226.7 for failure to permit paid rest breaks to
5 Plaintiffs and other aggrieved employees and failure to pay premium wages
6 for missed rest periods as herein alleged;
- 7 d. Violation of Labor Code §§ 1174 and 1174.5 for failure to maintain accurate
8 and complete records showing the hours worked daily by Plaintiffs and other
9 aggrieved employees as herein alleged; and
- 10 e. Violation of Labor Code § 226 for failure to provide accurate itemized wage
11 statements to Plaintiffs and other aggrieved employees as herein alleged.

12 96. Plaintiffs are “aggrieved employees” because they were employed by the alleged
13 violator and each Plaintiff had one or more of the alleged violations committed against him,
14 and therefore are properly suited to represent the interests of all other aggrieved employees.

15 97. Plaintiffs have exhausted the procedural requirements under Labor Code §
16 2699.3 as to Defendants and is therefore able to pursue a claim for penalties on behalf of
17 themselves and all other aggrieved employees under PAGA.

18 98. Pursuant to Labor Code §§ 2699(a), 2699.3 and 2699.5, Plaintiffs are entitled to
19 recover civil penalties for violations of the Labor Code sections cited above.

20 99. For bringing this action, Plaintiffs are entitled to attorney’s fees and costs incurred
21 herein.

22 **TENTH CAUSE OF ACTION**

23 **UNLAWFUL FAILURE TO PAY WAGES**

24 **(Violation of Fair Labor Standards Act, 29 U.S.C. § 201 et seq.)**

25 **(Brought by Plaintiffs on Behalf of Themselves and FLSA Collective Plaintiffs)**

26 100. Plaintiffs, on behalf of themselves and all FLSA Collective Plaintiffs, hereby re-
27 alleges and incorporates by reference the preceding paragraphs as though fully set forth herein.
28

1 101. On information and belief, at all relevant times, each Defendant has been, and
2 continues to be, an employer engaged in interstate commerce within the meaning of the FLSA,
3 29 U.S.C. §201, et seq. At all relevant times, each Defendant has employed, and continues to
4 employ the Covered Employees as employee[s] within the meaning of the FLSA. At all
5 relevant times, each Defendant has had gross operating revenues in excess of \$500,000.

6 102. Attached hereto as Exhibit 2 is the consent to join form signed by Plaintiffs in
7 this action pursuant to section 16(b) of the FLSA, 29 U.S.C. sections 216(b) and 256.

8 103. The FLSA requires each covered employer, such as Defendant, to compensate
9 all non-exempt employees for all hours worked and overtime at a rate of not less than one and
10 one-half times the regular rate of pay for work performed in excess of forty hours in a
11 workweek. The FLSA defines the regular rate to include all remuneration for employment paid
12 to, or on behalf of, the employee.

13 104. The FLSA Collective Plaintiffs were entitled to be paid minimum wages and
14 appropriate overtime compensation for all overtime hours worked.

15 105. At all relevant times, each Defendant has had, and continues to have common
16 policies, programs, practices, procedures, protocols, routines, and rules of willfully failing and
17 refusing to pay Plaintiffs and Covered Employees for all their hours worked, including
18 withholding minimum wages and overtime compensation, and failing to pay all overtime wages
19 at the regular rate of pay.

20 106. At all relevant times, each Defendant willfully, regularly and repeatedly failed,
21 and continues to fail to make, keep, and preserve accurate records required by the FLSA with
22 respect to plaintiffs and the other FLSA Covered Employees, including records sufficient to
23 accurately determine the wages and hours of employment pertaining to Plaintiffs and the other
24 Covered Employees.

25 107. By failing to compensate Plaintiffs and FLSA Collective Plaintiffs, at a rate not
26 less than one and one-half times the regular rate of pay for work performed in excess of forty
27 hours in a workweek, Defendant violated the FLSA, 29 U.S.C. sections 201 et seq., including
28 29 U.S.C. sections 207(a)(1) and 215(a).

108. By failing to record, report, and/or preserve records of hours worked by Plaintiffs and FLSA Collective Plaintiffs, Defendant has failed to make, keep, and preserve records with respect to each of its employees sufficient to determine their wages, hours, and other conditions and practice of employment, in violation of the FLSA, 29 U.S.C. sections 201 et seq., including 29 U.S.C. sections 211(c) and 215(a).

109. The foregoing conduct, as alleged, constitutes a willful violation of the FLSA within the meaning of 29 U.S.C. section 255(a).

110. Plaintiffs, on behalf of themselves and the FLSA Collective Plaintiffs, seek recovery of attorneys' fees and costs of action to be paid by Defendant, as provided by the FLSA, 29 U.S.C. section 216(b).

111. Plaintiffs, on behalf of himself and the FLSA Collective Plaintiffs, seek damages in the amount of their respective unpaid minimum wages, overtime compensation, liquidated damages as provided by the FLSA, 29 U.S.C. section 216(b), interest, and such other legal and equitable relief as the Court deems just and proper.

PRAYER FOR RELIEF

Plaintiffs, on their own behalf and on behalf of all others similarly situated, pray for relief and judgment against Defendants, jointly and severally, as follows:

1. For certification of this action as a class action, including certifying the Class and Subclass alleged by Plaintiffs;
2. For appointment of Michael Smith, John Cook, and Guillermo Gonzalez as the class representatives;
3. For appointment of Lebe Law, APLC, and Aegis Law Firm, PC as class counsel for all purposes;
4. For compensatory damages in an amount according to proof with interest thereon;
5. For economic and/or special damages in an amount according to proof with interest thereon;
6. For civil penalties against Defendants on behalf of all aggrieved employees;

1 7. For reasonable attorneys' fees, costs of suit and interest to the extent permitted
2 by law, including pursuant to FLSA, Code of Civil Procedure § 1021.5, Labor Code §§ 226(e)
3 and 1194;

4 8. For statutory penalties to the extent permitted by law, including those pursuant
5 to the Labor Code and IWC Wage Orders;

6 9. For restitution as provided by Business and Professions Code §§ 17200, *et seq.*;

7 10. For an order requiring Defendants to restore and disgorge all funds to each
8 employee acquired by means of any act or practice declared by this Court to be unlawful, unfair
9 or fraudulent and, therefore, constituting unfair competition under Business and Professions
10 Code §§ 17200, *et seq.*;

11 11. For an award of damages in the amount of unpaid compensation including, but
12 not limited to, unpaid wages, benefits and penalties, including interest thereon;

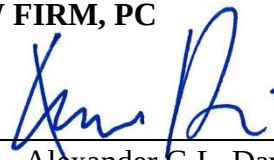
13 12. For pre-judgment interest; and

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

15
16 Dated: March 3, 2022

AEGIS LAW FIRM, PC

17
18 By: _____



Alexander G.L. Davies
Attorneys for Plaintiffs Michael Smith,
John Cook, and Guillermo Gonzalez

CERTIFICATE OF SERVICE

I, the undersigned, am employed in the County of Orange, State of California. I am over the age of 18 and not a party to the within action; am employed with Aegis Law Firm PC and my business address is 9811 Irvine Center Drive, Suite 100, Irvine, California 92618.

On June 13, 2022, I served the foregoing document entitled:

• FIRST AMENDED CLASS ACTION COMPLAINT

on all the appearing and/or interested parties in this action by delivering ☐ the original ☒ a true copy thereof on the party(ies) addressed below as follows:

Joan Tucker Fife WINSTON & STRAWN LLP 101 California Street, 35th Floor San Francisco, CA 94111 Telephone: (415) 591-1000 Facsimile: (415) 591-1400 jfife@winston.com	Caitlin Tran WINSTON & STRAWN LLP 333 South Grand Avenue, Suite 3800 Los Angeles, CA 90071 Telephone: (213) 615-1700 Facsimile: (213) 615-1750 cwtran@winston.com
<i>Attorneys for Defendant:</i> LAND O'LAKES, INC.	

☐ **(BY MAIL)** I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Irvine, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postage cancellation date or postage meter date is more than one day after date of deposit for mailing this affidavit. (*Cal Code Civ. Proc.* § 1013(a); *Fed. R. Civ. Proc.* 5(a); *Fed. R. Civ. Proc.* 5(c).)

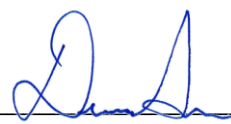
☐ **(BY OVERNIGHT MAIL)** I am personally and readily familiar with the business practice of Aegis Law Firm PC for collection and processing correspondence for overnight delivery, and I caused such document(s) described herein to be deposited for delivery to a facility regularly maintained Federal Express for overnight delivery. (*Cal Code Civ. Proc.* § 1013(c); *Fed. R. Civ. Proc.* 5(c).)

☒ **(BY ELECTRONIC TRANSMISSION)** I caused said document(s) to be served via electronic transmission via the above listed email addresses on the date below. (*Cal. Code Civ. Proc.* § 1010.6(6); *Fed. R. Civ. Proc.* 5(b)(2)(E); *Fed. R. Civ. Proc.* 5(b)(3).)

☐ **(BY PERSONAL SERVICE)** I delivered the foregoing document by hand delivery to the addressed named above. (*Cal Code Civ. Proc.* § 1011; *Fed. R. Civ. Proc.* 5(b)(2)(A).)

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

Executed on June 13, 2022, at Irvine, California.



Delaney Graves