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FILED
MADERA SUPERIOR COURT

JUN 29 2020

CLERK

DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF MADERA

CRISTINA PENALOZA, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

MID VALLEY LABOR SERVICES, INC., a
California corporation; and DOES 1 through 100,

Defendants.

Case No.: MCV083505

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT:**

- (1) REST PERIOD VIOLATIONS
(LABOR CODE §§ 226.7, 516, 558);
- (2) MINIMUM WAGE VIOLATIONS
(LABOR CODE §§ 1182.12, 1194,
1194.2, 1197);
- (3) WAGE STATEMENT
VIOLATIONS (LABOR CODE §
226 *et seq.*);
- (4) WAITING TIME PENALTIES
(LABOR CODE §§ 201-203);
- (5) UNFAIR COMPETITION (BUS &
PROF CODE § 17200 *et seq.*); AND
- (6) CIVIL PENALTIES UNDER THE
PRIVATE ATTORNEYS
GENERAL ACT (LABOR CODE §
2698 *et seq.*).

**DEMAND FOR JURY TRIAL
UNLIMITED CIVIL CASE**

FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT

FAXED

1 Cristina Penaloza (“Plaintiff”) on behalf of herself and all others similarly situated, hereby
2 brings this First Amended Class and Representative Action Complaint (“Complaint”) against
3 Defendants Mid Valley Labor Services, Inc., a California Corporation; and DOES 1 to 100
4 (collectively “Defendants”), inclusive, and on information and belief alleges as follows:

5 **JURISDICTION**

6 1. Plaintiff, on behalf of herself and all others similarly situated, hereby brings this
7 action for recovery of unpaid wages and penalties under California Labor Code §§ 201-203; 205;
8 226 *et seq.*, 226.2, 226.7, 516, 558, 1182.12, 1194, 1194.2, 1197, and 2698 *et seq.*, Business and
9 Professions Code § 17200 *et. seq.* (“Unfair Competition Law”), and Industrial Welfare
10 Commission Wage Order 14-2001 (“Wage Order 14”), in addition to seeking declaratory relief
11 and restitution. This action is brought pursuant to California Code of Civil Procedure § 382.
12 This Court has jurisdiction over Defendants’ violations of the California Labor Code because
13 the amount in controversy exceeds this Court's jurisdictional minimum.

14 **VENUE**

15 2. Venue as to each Defendant is proper in this judicial district pursuant to California
16 Code of Civil Procedure §§ 395(a) and 395.5, as at least some of the acts and omissions
17 complained of herein occurred in Madera County. Defendants own, maintain offices, transact
18 business, have an agent or agents within the County of Madera, and/or otherwise are found within
19 the County of Madera, and Defendants are within the jurisdiction of this Court for purposes of
20 service of process.

21 **PARTIES**

22 3. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein,
23 Plaintiff was and currently is, a California resident. During the four years immediately preceding
24 the filing of this action and within the statute of limitations periods applicable to each cause of
25 action pled herein, Plaintiff was employed by Defendants as a non-exempt employee in Madera
26 County. Plaintiff was, and is, a victim of Defendants’ policies and/or practices complained of
27 herein, lost money and/or property, and has been deprived of the rights guaranteed by §§ 201-
28 203, 226 *et seq.*, 226.2, 226.7, 516, 558, 1182.12, 1194, 1194.2, 1197, and 2698 *et seq.*,

1 California's Unfair Competition Law, and Wage Order 14, which sets employment standards for
2 the agricultural industry.

3 4. Plaintiff is informed and believes, and based thereon alleges, that during the four
4 years preceding the filing this action and continuing to the present, Defendants did (and continue
5 to do) business within the County of Madera and the State of California by employing seasonal
6 farm labor employees to harvest produce such as grapes and plums, and therefore, were (and are)
7 doing business in the County of Madera and the State of California.

8 5. Plaintiff does not know the true names or capacities, whether individual, partner,
9 or corporate, of the defendants sued herein as DOES 1 to 100, inclusive, and for that reason, said
10 defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to
11 further amend this Complaint when such true names and capacities are discovered. Plaintiff is
12 informed, and believes, and based thereon alleges, that each of said fictitious defendants, whether
13 individual, partners, or corporate, were responsible in some manner for the acts and omissions
14 alleged herein, and proximately caused Plaintiff and the Classes (as defined herein) to be subject
15 to the unlawful employment practices, wrongs, injuries and damages complained of herein.

16 6. Plaintiff is informed and believes, and based thereon alleges, that at all times
17 mentioned herein, Defendants were and are the employers of Plaintiff and all members of the
18 Classes.

19 7. At all times herein mentioned, each of said Defendants participated in the doing
20 of the acts hereinafter alleged to have been done by the named Defendants, and furthermore, the
21 Defendants, and each of them, were the agents, servants, and employees of each and every one
22 of the other Defendants, as well as the agents of all Defendants, and at all times herein mentioned
23 were acting within the course and scope of said agency and employment. Defendants, and each
24 of them, approved of, condoned, and/or otherwise ratified each and every one of the acts or
25 omissions complained of herein.

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

GENERAL FACTUAL ALLEGATIONS

9. Plaintiff worked for Defendants as a non-exempt seasonal farm labor employee from approximately June 2017 to July 2019. Defendants are in the agriculture business and employ seasonal farm labor employees to harvest produce, such as grapes and plums. Defendants did not board or lodge Plaintiff during her employment. Defendants compensated Plaintiff on an alternating piece-rate and hourly basis. On days that Defendants paid its employees on a piece-rate basis, Defendants paid Plaintiff a pre-determined amount per bin of produce she filled.

10. Throughout Plaintiff's employment, Defendants failed to maintain accurate records of Plaintiff's actual hours worked. Defendants utilized no timeclock system for employees and did not provide employees with any opportunity to verify or affirm their hours worked. Instead, Defendants maintained their own records of employees' hours worked, which, upon information and belief, did not account for all hours actually worked. As a result, Defendants failed to maintain accurate records, and Plaintiff and other non-exempt employees were not credited with the correct number of hours worked, leading to unpaid wages.

11. Throughout her employment, Defendants did not accurately compensate Plaintiff and other non-exempt employees paid on a piece-rate basis for rest and recovery periods, as required under Labor Code § 226.2(a)(3)(A) (requiring employees who are compensated on a piece-rate basis to be separately compensated for rest periods at the *higher of* the minimum wage or the average hourly rate of pay during the workweek) (emphasis added). Although Defendants maintain a payroll code denoted as "Non-Productive Compensation Non-Productive" on their wage statements, upon information and belief, this payroll code actually compensates Plaintiff and other non-exempt piece-rate employees for rest and recovery periods since it is typically paid in increments of 10-minutes. Defendants' payroll records reflect that this payroll code is often paid at varying rates within the same workweek, despite the fact that all rest and recovery periods in a workweek must be compensated at the average hourly rate in effect during the workweek pursuant to Labor Code § 226.2(a)(3)(A). Furthermore, Defendants' payroll records reflect that Defendants failed to compensate Plaintiff and other non-exempt employees paid on a piece-rate basis for the correct number of rest periods per shift. Specifically, on occasions when Plaintiff's

1 wage statements indicate that she worked in excess of 6.0 hours while being compensated on a
2 piece-rate basis, Defendants only separately compensated her for *one* rest and recovery period
3 instead of two, in violation of Wage Order 14 § 12 (providing that employees who work 3.5 hours
4 or more shall be entitled to a rest period of 10 minutes every 4 hours worked or major fraction
5 thereof). Furthermore, Defendants’ failure to record all hours actually worked by piece-rate
6 employees has led to a further failure to compensate employees for the correct number of rest
7 periods per workday.

8 12. Similarly, Defendants failed to accurately record and compensate Plaintiff and
9 other non-exempt employees who were compensated on a piece-rate basis for non-productive
10 time. *See Gonzalez v. Downtown LA Motors, LP* (2013) 215 Cal.App.4th 36 (holding that a piece-
11 rate compensation structure that does not separately compensate employees for non-productive
12 time violates California minimum wage laws). For example, employees would be impacted by
13 weather delays approximately three times per week for up to an hour each time, such as needing
14 to wait while the fields thawed out after cold weather. Employees also often waited for
15 Defendants to provide equipment and supplies such as pruning shears and zip ties when they ran
16 out, which could take between 20 to 30 minutes. Additionally, on occasions when employees
17 completed a field prior to the end of the workday, or if a field was too cold or frozen, they would
18 have to travel to a new field to continue working which could take up to 20 minutes. Upon
19 information and belief, Defendants failed to record and compensate Plaintiff and other non-
20 exempt piece-rate employees for such non-productive time. To the extent that Defendants argue
21 that the “Non-Productive Compensation Non-Productive” payments were intended to compensate
22 for non-productive time, such payments are still inadequate because they do not accurately
23 compensate for the correct amount of non-productive time that Plaintiff and other non-exempt
24 employees experienced.

25 13. As a result of Defendants’ failure to accurately compensate Plaintiff and other non-
26 exempt employees for rest periods and non-productive time, Defendants maintained inaccurate
27 payroll records, issued inaccurate wage statements, and failed to timely pay all wages owed to
28 separating employees at the time of their separation. Defendants also issued facially deficient

1 wage statements that list the full social security number of the employee, in violation in violation
2 of Labor Code § 226 (requiring that *only* the last four digits of the employee’s social security
3 number be listed).

4 14. Additionally, as a farm labor contractor, Defendant Mid Valley Labor Services,
5 Inc., is subject to the requirements of Labor Code § 205, which requires that employees be paid
6 weekly, on a business day designated in advance, for all wages earned up to and including the
7 fourth day before the scheduled payday. However, Defendants paid their employees on a one-
8 week delay – a check dated on Saturday compensated employees for wages earned from Sunday
9 through Saturday of the previous workweek, in violation of the “fourth day” requirement found
10 in Labor Code § 205.

11 **CLASS ACTION ALLEGATIONS**

12 15. **Class Definitions:** Plaintiff brings this action on behalf of herself and the
13 following Classes pursuant to § 382 of the Code of Civil Procedure:

14 a. The Rest Period Class consists of all current and former non-exempt
15 employees of Defendant Mid-Valley Labor Services, Inc. who worked at least one shift
16 in excess of 3.5 hours while being compensated on a piece-rate basis during the four
17 years immediately preceding the filing of this action through the present.

18 b. The Minimum Wage Class consists of all current and former non-exempt
19 employees of Defendant Mid-Valley Labor Services, Inc. who: (i) were compensated on
20 a piece-rate basis; and/or (ii) were subject to Defendants’ timekeeping policies and/or
21 practices, during the four years immediately preceding the filing of this action through
22 the present.

23 c. The Wage Statement Class consists of: (i) all members of the Rest Period
24 Class and/or Minimum Wage Class who received a wage statement from Defendants
25 during the one year immediately preceding the filing of this action through the present;
26 and/or (ii) any of Defendants’ current and former employees who received a wage
27 statement that listed the employee’s full social security number, during the one year
28 immediately preceding the filing of this action through the present.

1 d. The Waiting Time Class consists of all formerly employed members of
2 the Rest Period Class and/or Minimum Wage Class who separated their employment
3 from Defendants within the three years immediately preceding the filing of this action
4 through the present.

5 16. **Numerosity/Ascertainability:** The members of the Classes are so numerous that
6 joinder of all members would be unfeasible and not practicable. The membership of the classes
7 and subclasses are unknown to Plaintiff at this time; however, it is estimated that the Classes
8 number greater than one thousand (1,000) individuals as to each Class. The identity of such
9 membership is readily ascertainable via inspection of Defendants' employment records.

10 17. **Common Questions of Law and Fact Predominate/Well Defined Community**
11 **of Interest:** There are common questions of law and fact as to Plaintiff and all other similarly
12 situated employees, which predominate over questions affecting only individual members
13 including, without limitation to:

14 i. Whether Defendants correctly compensated employees for rest periods
15 other non-productive time pursuant to Labor Code § 226.2;

16 ii. Whether Defendants paid all minimum wages owed for all hours worked
17 to members of the Minimum Wage Class pursuant to Labor Code §§ 1182.12, 1194,
18 1194.2, and 1197;

19 iii. Whether Defendants' timekeeping policies/practices resulted in the
20 failure to properly compensate members of the Minimum Wage Class;

21 iv. Whether Defendants furnished legally compliant wage statements to
22 members of the Wage Statement Class pursuant to Labor Code § 226; and

23 v. Whether Defendants timely paid all wages/compensation due upon
24 separation to members of the Waiting Time Class pursuant to Labor Code §§ 201-203.

25 18. **Predominance of Common Questions:** Common questions of law and fact
26 predominate over questions that affect only individual members of the Classes. The common
27 questions of law set forth above are numerous and substantial and stem from Defendants'
28 policies and/or practices applicable to each individual class member, such as Defendants'

uniform rest period policies/practices, timekeeping policies/practices, and wage statement policies/practices. As such, the common questions predominate over individual questions concerning each individual class member's showing as to his or her eligibility for recovery or as to the amount of his or her damages.

19. **Typicality:** Plaintiff's claims are typical of the claims of the Classes because Plaintiff was employed by Defendants as a non-exempt employee in California during the statutes of limitation periods applicable to each cause of action pled herein. As alleged herein, Plaintiff, like the members of the Classes, was deprived of all rest and recovery wages, all minimum wages owed, was furnished with inaccurate and incomplete wage statements, and was not timely paid all earned wages at the time of her separation.

20. **Adequacy of Representation:** Plaintiff is fully prepared to take all necessary steps to represent fairly and adequately the interests of the members of the Classes. Moreover, Plaintiff's attorneys are ready, willing, and able to fully and adequately represent the members of the Classes and Plaintiff. Plaintiff's attorneys have prosecuted and defended numerous wage and hour class actions in state and federal courts in the past, and are committed to vigorously prosecuting this action on behalf of the members of the Classes.

21. **Superiority:** The California Labor Code is broadly remedial in nature and serves an important public interest in establishing minimum working conditions and standards in California. These laws and labor standards protect the average working employee from exploitation by employers who have the responsibility to follow the laws, and who may seek to take advantage of superior economic and bargaining power in setting onerous terms and conditions of employment. The nature of this action and the format of laws available to Plaintiff and members of the Classes make the class action format a particularly efficient and appropriate procedure to redress the violations alleged herein. If each employee was required to file an individual lawsuit, Defendants would necessarily gain an unconscionable advantage since they would be able to exploit and overwhelm the limited resources of each individual plaintiff with their vastly superior financial and legal resources. Moreover, requiring each member of the Class(es) to pursue an individual remedy would also discourage the assertion of lawful claims

1 by employees who would be disinclined to file an action against their former and/or current
2 employer for real and justifiable fear of retaliation and permanent damages to their careers at
3 subsequent employment. Further, the prosecution of separate actions by the individual class
4 members, even if possible, would create a substantial risk of inconsistent or varying verdicts or
5 adjudications with respect to the individual class members against Defendants herein; and which
6 would establish potentially incompatible standards of conduct for Defendants; and/or legal
7 determinations with respect to individual class members which would, as a practical matter, be
8 dispositive of the interest of the other class members not parties to adjudications or which would
9 substantially impair or impede the ability of the class members to protect their interests. Further,
10 the claims of the individual members of the Classes are not sufficiently large to warrant vigorous
11 individual prosecution considering all of the concomitant costs and expenses attending thereto.
12 As such, the Classes (as defined herein) are maintainable under § 382 of the Code of Civil
13 Procedure.

14 **FIRST CAUSE OF ACTION**

15 **REST PERIOD VIOLATIONS**

16 **(AGAINST ALL DEFENDANTS)**

17 22. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

18 23. Labor Code § 226.2 mandates that employees compensated on a piece-rate basis
19 must be compensated for their rest periods at the higher of the minimum wage or the average
20 hourly rate of pay during the workweek. Wage Order 14 section 12 mandates that employers
21 shall authorize and permit rest periods “based on the total hours worked daily at the rate of ten
22 (10) minute net rest time per four (4) hours or major fraction thereof. However, a rest period
23 need not be authorized for employees whose total daily work time is less than three and one-half
24 (3 1/2) hours.”

25 24. As alleged herein, and due to Defendants’ unlawful rest period policies and/or
26 practices, Defendants did not accurately compensate Plaintiff and members of the Rest Period
27 Class for all rest periods to which they were legally entitled. Despite Defendants’ violations,
28 Defendants failed to pay an additional hour of premium pay to Plaintiff and members of the Rest

1 Period Class at their respective regular rates of pay for each violation, as required by California
2 Labor Code § 226.7.

3 25. The foregoing policies and practices are unlawful and create an entitlement to
4 recovery by Plaintiff and the Rest Period Class in a civil action for the unpaid amount of rest
5 period premiums owing, including interest thereon, statutory penalties, civil penalties, and costs
6 of suit according to Labor Code §§ 226.2, 226.7, 516, and 558, and Code of Civil Procedure §
7 1021.5.

8 **SECOND CAUSE OF ACTION**
9 **MINIMUM WAGE VIOLATIONS**
10 **(AGAINST ALL DEFENDANTS)**

11 26. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

12 27. Wage Order 14 § 4 and California Labor Code §§ 1197 and 1182.12 establish the
13 right of employees to be paid minimum wages for all hours worked, in amounts set by state law.
14 Labor Code §§ 1194(a) and 1194.2(a) provide that an employee who has not been paid the legal
15 minimum wage as required by Labor Code § 1197 may recover the unpaid balance together with
16 attorneys' fees and costs of suit, as well as liquidated damages in an amount equal to the unpaid
17 wages and interest accrued thereon.

18 28. At all relevant times herein, Defendants failed to conform their pay practices to
19 the requirements of the law by failing to pay Plaintiff and members of the Minimum Wage Class
20 for all hours worked including, but not limited to, all hours they were subject to the control of
21 Defendants and/or suffered or permitted to work under the California Labor Code and Wage
22 Order 14.

23 29. California Labor Code § 1198 makes unlawful the employment of an employee
24 under conditions that the IWC prohibits. California Labor Code §§ 1194(a) and 1194.2(a)
25 provide that an employer who has failed to pay its employees the legal minimum wage is liable
26 to pay those employees the unpaid balance of the unpaid wages as well as liquidated damages in
27 an amount equal to the wages due and interest thereon.

28 ///

30. As a direct and proximate result of Defendants' unlawful conduct as alleged herein, Plaintiff and the Minimum Wage Class have sustained economic damages including, but not limited to, unpaid wages and lost interest, in an amount to be established at trial, and are entitled to recover economic and statutory damages and penalties and other appropriate relief as a result of Defendants' violations of the California Labor Code and Wage Order 14.

31. The foregoing practices and policies are unlawful and create an entitlement to recovery by Plaintiff and the members of the Minimum Wage Class in a civil action for the unpaid amount of minimum wages owing, including interest thereon, liquidated damages, statutory and civil penalties, attorney's fees, and costs of suit according to California Labor Code §§ 204, 558, 1194, 1197, and 1198, Wage Order 14, and Code of Civil Procedure § 1021.5.

THIRD CAUSE OF ACTION

WAGE STATEMENT PENALTIES

(AGAINST ALL DEFENDANTS)

32. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

33. Plaintiff is informed and believes, and based thereon allege, that Defendants knowingly and intentionally, as a matter of uniform policy and practice, failed to furnish Plaintiff and the Wage Statement Class with accurate and complete itemized wage statements that included, among other requirements, all rest period wages earned, all minimum wages earned, and only the last four digits of the employee's social security number, in violation of Labor Code § 226.

34. Defendants' failure to furnish Plaintiff and members of the Wage Statement Class with complete and accurate itemized wage statements resulted in actual injury, as said failures led to, among other things, the non-payment of all rest period premium wages, all minimum wages owed, and deprived them of the information necessary to identify the discrepancies in Defendants' reported data.

35. Defendants' failures create an entitlement to recovery by Plaintiff and members of the Wage Statement Class in a civil action for all damages and/or penalties pursuant to Labor

Code § 226 *et. seq.*, including statutory penalties, civil penalties, reasonable attorneys' fees, and costs of suit according to California Labor Code § 226 *et. seq.*

FOURTH CAUSE OF ACTION
WAITING TIME PENALTIES
(AGAINST ALL DEFENDANTS)

36. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

37. This cause of action is brought pursuant to Labor Code §§ 201-203, which require an employer to pay all wages earned immediately at the time of separation of employment in the event the employer discharges the employee, or if the employee provides at least 72 hours of notice of his/her intent to quit. In the event the employee provides less than 72 hours of notice of his/her intent to quit, said employee's wages become due and payable not later than 72 hours upon said employee's last date of employment.

38. Plaintiff is informed and believes, and based thereon alleges, that Defendants failed to timely pay Plaintiff and members of the Waiting Time Class all final wages due to them at the time of their separation. Further, Plaintiff is informed and believes, and based thereon alleges, that as a matter of uniform policy and practice, Defendants continue to fail to pay members of the Waiting Time Class all earned wages at the end of employment in a timely manner pursuant to the requirements of Labor Code §§ 201-203. Defendants' failure to pay all final wages was willful within the meaning of Labor Code § 203.

39. Defendants' willful failure to timely pay Plaintiff and members of the Waiting Time Class all earned wages upon separation from employment results in a continued payment of wages up to thirty (30) days from the time the wages were due. Therefore, Plaintiff and members of the Waiting Time Class are entitled to compensation pursuant to Labor Code § 203, plus reasonable attorneys' fees and costs of suit.

FIFTH CAUSE OF ACTION
UNFAIR COMPETITION
(AGAINST ALL DEFENDANTS)

40. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

1 41. Defendants have engaged and continue to engage in unfair and/or unlawful
2 business practices in California in violation of California Business and Professions Code §
3 17200, *et seq.*, by failing to pay Plaintiff and the Classes all rest period premium wages and/or
4 all minimum wages owed, knowingly failing to furnish Plaintiff and members of the Wage
5 Statement Class with accurate and complete wage statements, in violation of Labor Code § 226
6 *et seq.*, and failing to pay all final wages at the time of separation from employment.

7 42. Defendants' utilization of these unfair and/or unlawful business practices
8 deprived Plaintiff, and continues to deprive members of the Classes, of compensation to which
9 they are legally entitled, constitutes unfair and/or unlawful competition, and provides an unfair
10 advantage over Defendants' competitors who have been and/or are currently employing workers
11 and attempting to do so in honest compliance with applicable wage and hour laws.

12 43. Because Plaintiff is a victim of Defendants' unfair and/or unlawful conduct
13 alleged herein, Plaintiff, for herself and on behalf of the members of the Classes, seeks full
14 restitution of monies as necessary and according to proof, to restore any and all monies withheld,
15 acquired, and/or converted by Defendants pursuant to Business and Professions Code §§ 17203
16 and 17208.

17 44. The acts complained of herein occurred within the four years immediately
18 preceding the filing of the Complaint in this action.

19 45. Plaintiff was compelled to retain the services of counsel to file this court action
20 to protect her interests and those of the Classes, to obtain restitution and injunctive relief on
21 behalf of Defendants' current non-exempt employees, and to enforce important rights affecting
22 the public interest. Plaintiff has thereby incurred the financial burden of attorneys' fees and
23 costs, which they are entitled to recover under Code of Civil Procedure § 1021.5.

24 **SIXTH CAUSE OF ACTION**

25 **PRIVATE ATTORNEYS GENERAL ACT**

26 **(AGAINST ALL DEFENDANTS)**

27 46. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

28 ///

1 47. Defendants have committed several Labor Code violations against Plaintiff,
2 members of the Classes, and other aggrieved employees. Plaintiff, as an “aggrieved employee”
3 within the meaning of Labor Code § 2698 *et seq.*, acting on behalf of herself and other aggrieved
4 employees, brings this representative action against Defendants to recover the civil penalties due
5 to Plaintiff, the members of the Classes, other aggrieved employees, and the State of California
6 according to proof pursuant to Labor Code §§ 558 and 2699 (a) and (f) including, but not limited
7 to: (1) \$100.00 for each initial violation for each failure to pay each employee and \$200.00 for
8 each subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for
9 each failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) \$50.00 for
10 each initial violation and \$100.00 for each subsequent violation pursuant to Labor Code § 558
11 per employee per pay period; (3) \$100.00 for each initial violation and \$250.00 for each
12 subsequent violation pursuant to Labor Code § 1197.1 per employee per pay period; (4) \$250.00
13 for each initial violation and \$1,000.00 for each subsequent violation pursuant to Labor Code §
14 226.3 per employee per pay period; and/or (5) \$100.00 for each initial violation and \$200.00 for
15 each subsequent violation per employee per pay period for those violations of the Labor Code
16 for which no civil penalty is specifically provided, based on the following Labor Code violations:

- 17 a. Failing to authorize and permit Plaintiff and other aggrieved piece-rate
18 employees to take all required rest periods and failing to pay rest period
19 premiums to Plaintiff and other aggrieved piece-rate employees at these
20 employees’ respective regular rates of compensation for rest period violations
21 in violation of Labor Code §§ 226.7, 516, and 558;
- 22 b. Failing to pay Plaintiff and other aggrieved employees the statutory minimum
23 wage for all hours worked in violation of Labor Code §§ 1182.12, 1194,
24 1194.2, and 1197;
- 25 c. Failing to furnish Plaintiff and other aggrieved employees with accurate and
26 compliant itemized wage statements in violation of Labor Code § 226;
- 27 d. Failing to timely pay all final wages due to Plaintiff and other aggrieved
28 employees in violation of Labor Code §§ 201, 202, and 203;

- 1 e. Failing to pay Plaintiff and other aggrieved employees all wages earned at
2 least twice during each calendar month in violation of Labor Code § 204; and
3 f. Failing to maintain accurate records on behalf of Plaintiff and other aggrieved
4 employees in violation of Labor Code §§ 1174 and 1198.

5 48. On or around April 22, 2020, Plaintiff notified Defendants via certified mail, and
6 notified the California Labor and Workforce Development Agency (“LWDA”) via its website,
7 of Defendants’ violations of the California Labor Code and Plaintiff’s intent to bring a claim for
8 civil penalties under California Labor Code § 2698 *et seq.* with respect to the violations of the
9 California Labor Code identified in Paragraph 47 (a)-(f). Now that sixty-five days have passed
10 from Plaintiff notifying Defendants and the LWDA of these violations, and the LWDA has not
11 provided notice that it intends to investigate the violations, Plaintiff has exhausted her
12 administrative requirements for bringing a claim under the Private Attorneys General Act with
13 respect to these violations.

14 49. Based on the foregoing, Plaintiff seeks to represent herself and all Aggrieved
15 Employees, as defined by Labor Code § 2699(c), which includes all current and former non-
16 exempt employees who worked for Defendants in California between April 22, 2019 and the
17 present.

18 50. Plaintiff was compelled to retain the services of counsel to file this court action
19 to protect her interests and the interests of other aggrieved piece rate employees, and to assess
20 and collect the civil penalties owed by Defendants. Plaintiff has thereby incurred attorneys’ fees
21 and costs, which she is entitled to recover under California Labor Code § 2699.

22 **PRAYER**

23 WHEREFORE, Plaintiff prays for judgment for herself and for all others on whose behalf
24 this suit is brought against Defendants, as follows:

- 25 1. For an order certifying the proposed Classes;
26 2. For an order appointing Plaintiff as representative of the Classes;
27 3. For an order appointing counsel for Plaintiff as counsel for the Classes;
28

1 4. Upon the First Cause of Action, for compensatory, consequential, general and
2 special damages according to proof pursuant to Labor Code §§ 226.2, 226.7, 516, and 558;

3 5. Upon the Second Cause of Action, for payment of minimum wages, liquidated
4 damages, and penalties owed according to proof pursuant to Labor Code §§ 1182.12, 1194,
5 1194.2 and 1197;

6 6. Upon the Third Cause of Action, for statutory penalties pursuant to Labor Code
7 § 226 *et. seq.*;

8 7. Upon the Fourth Cause of Action, for statutory waiting time penalties pursuant to
9 Labor Code §§ 201-203;

10 8. Upon the Fifth Cause of Action, for restitution to Plaintiff and members of the
11 Classes of all money and/or property unlawfully acquired by Defendants by means of any acts
12 or practices declared by this Court to be in violation of California Business and Professions Code
13 § 17200 *et seq.*;

14 9. Upon the Sixth Cause of Action, for civil penalties due to Plaintiff, other
15 aggrieved employees, and the State of California according to proof pursuant to Labor Code §§
16 558 and 2699(a) and (f) including, but not limited to: (1) \$100.00 for each initial violation for
17 each failure to pay each employee and \$200.00 for each subsequent violation or willful or
18 intentional violation pursuant to Labor Code § 210 for each failure to pay each employee, plus
19 25% of the amount unlawfully withheld; (2) \$50.00 for each initial violation and \$100.00 for
20 each subsequent violation pursuant to Labor Code § 558 per employee per pay period; (3)
21 \$100.00 for each initial violation and \$250.00 for each subsequent violation pursuant to Labor
22 Code § 1197.1 per employee per pay period; (4) \$250.00 for each initial violation and \$1,000.00
23 for each subsequent violation pursuant to Labor Code § 226.3 per employee per pay period;
24 and/or (5) \$100.00 for each initial violation and \$200.00 for each subsequent violation per
25 employee per pay period for those violations of the Labor Code for which no civil penalty is
26 specifically provided, based on the violations of Labor Code sections identified in Paragraph 47
27 (a)-(f) above;

1 10. Prejudgment interest on all due and unpaid wages pursuant to Labor Code § 218.6
2 and Civil Code §§ 3287 and 3289;

3 11. On all causes of action, for attorneys' fees and costs as provided by Labor Code §§
4 218.5, 226, 1194, and 2698 *et seq.*, and Code of Civil Procedure § 1021.5; and

5 12. For such other and further relief, the Court may deem just and proper.

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7 Dated: June 29, 2020

Respectfully submitted,
HAINES LAW GROUP, APC

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9 By:


Fletcher W. Schmidt

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13 **DEMAND FOR JURY TRIAL**

14 Plaintiff hereby demands a jury trial with respect to all issues triable by jury.

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16 Dated: June 29, 2020

Respectfully submitted,
HAINES LAW GROUP, APC

17
18 By:


Fletcher W. Schmidt
Attorney for Plaintiff

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STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) ss.
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On June 29, 2020, I served the foregoing document(s) described as:

on the interested party(ies) in this action as follows:

Executed on June 29, 2020, at El Segundo, California.


Jonathan Ramirez