

STIPULATION OF SETTLEMENT

This Stipulation of Settlement ("Settlement Agreement") is reached by and between Plaintiff Maria E. Herrera De Quilo ("Plaintiff"), individually and on behalf of all members of the Settlement Class, defined below, and Defendant Yergat Packing Company, Inc. ("Yergat" or "Defendant"). Plaintiff and Defendant are referred to herein collectively as the "Parties." Plaintiff and the Settlement Class are represented by Daniel J. Brown of Stansbury Brown Law ("Class Counsel"). Yergat is represented by Steven Wainess and James D. Miller of Raimondo & Associates.

Plaintiff filed a Class Action Complaint ("Complaint") against Yergat on May 12, 2020 in Fresno County Superior Court, Case No. 20CECG01425, which alleges causes of action for: (1) minimum wage violations (2) failure to pay all overtime wages; (3) meal period violations; (4) rest period violations; (5) failure to reimburse necessary business expenses; (6) wage statement violations; (7) waiting time penalties; and (8) unfair competition.

Plaintiff filed a First Amended Class and Representative Action Complaint ("FAC") on September 4, 2020, to add an additional cause of action for civil penalties under the Private Attorneys General Act ("PAGA") pursuant to Labor Code Sections 2698 *et seq.* On May 14, 2021, the case was transferred from Fresno County Superior Court to Madera County Superior Court and reassigned case number MCV085367. As a condition of settlement, Plaintiff will request the Court approve the filing of a Second Amended Class Action Complaint ("SAC") to redefine the class definitions into a single class definition to include only non-exempt employees subject to Wage Order 14 who did not sign an arbitration agreement. The proposed SAC is attached hereto as **Exhibit 1**. The Complaint, FAC, and SAC are collectively referred to herein as the "Lawsuit".

Given the risks and uncertainties of litigation, the Parties have agreed to settle this Lawsuit on the terms set forth herein and subject to the approval of Court. Nothing herein shall be construed as an admission of any wrongdoing or of liability as the Settlement Agreement is intended solely to allow the Parties to buy their peace and resolve the disputed claims asserted in this Lawsuit.

1. Certification for Settlement Purposes. For the purposes of this Settlement Agreement only, the Parties stipulate to certification of the following Settlement Class:

Settlement Class – All of Defendant Yergat Packing Company, Inc.'s current and former non-exempt employees in California who were subject to the requirements of Wage Order 14 and did not sign an arbitration agreement who worked for Defendant at any during the period of May 12, 2016, to December 18, 2020. ("Settlement Class" or "Settlement Class Members").

The Parties agree that certification for purposes of settlement is not an admission that class certification is proper under Section 382 of the Code of Civil Procedure or Federal Rule of Civil Procedure Rule 23.

If for any reason this Settlement Agreement is not approved or is terminated, in whole or in part, this conditional agreement to class certification will be inadmissible and will have no effect in this matter or in any claims brought on the same or similar allegations, and the Parties shall revert to the respective positions they held prior to entering into the Settlement Agreement.

2. **Releases.**

- A. **Releases by Settlement Class Members.** Plaintiff and every member of the Settlement Class (except those who opt out, as described below) will fully release and discharge Defendant, its past and present officers, directors, shareholders, employees, agents, principals, heirs, representatives, and their respective successors and predecessors in interest, subsidiaries, affiliates, parents, and attorneys (collectively the "Released Parties") for all claims that were pled or could have been pled based on the factual allegations in the SAC, including: (a) minimum wage violations (b) failure to pay all overtime wages; (c) meal period violations; (d) rest period violations; (e) failure to reimburse necessary business expenses; (f) wage statement violations; (g) waiting time penalties; (h) all claims arising out of unfair business practices under Business & Professions Code § 17200, *et seq.* that could have been premised on the claims that were pled or could have been pled based on the factual allegations in the SAC; and (i) all claims for civil penalties under the PAGA, that could have been premised on the claims that were pled or could have been based on the factual allegations in the SAC. (collectively, the "Released Claims"). For members of the Settlement Class who do not validly opt out, the release period shall run from May 12, 2016 through December 18, 2020 ("Class Period").
- B. **Plaintiff's Release of Unknown Claims.** In light of her Class Representative Enhancement Payment, Plaintiff, Maria E. Herrera De Quilo, has agreed to release, in addition to the Released Claims described above, all claims, whether known or unknown, under federal law or state law against the Released Parties. Plaintiff understands that this release includes unknown claims and that she is, as a result, waiving all rights and benefits afforded by Section 1542 of the California Civil Code, which provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

However, to the extent that Plaintiff has claims that cannot be released as a matter of law (i.e., workers' compensation claims), then those claims will not be released.

3. **Settlement Payment.** In exchange for the releases set forth in this Settlement Agreement, Yergat agrees to pay a common fund of Two Hundred Fifty Thousand Dollars and Zero Cents (\$250,000.00) (the "Maximum Settlement Amount") in full and complete settlement of this matter, as follows:
- A. The Maximum Settlement Amount shall be deposited with the Settlement Administrator within fourteen (14) days after the date the Court enters an order granting final approval of the settlement or, solely in the event that there are any objections to the settlement (the filing of an objection being a prerequisite to the filing of an appeal), the later of: (i) the last date on which any appeal might be filed

or (ii) the successful resolution of any appeal(s) – including expiration of any time to seek reconsideration or further review; (“the Final Effective Date”).

B. This is a non-reversionary settlement. The Maximum Settlement Amount includes:

- (1) All payments to the Settlement Class;
- (2) All fees and expenses of the Settlement Administrator associated with the administration of the settlement, which are anticipated to be no greater than Thirty Thousand Dollars and Zero Cents (\$30,000.00);
- (3) Up to Five Thousand Dollars and Zero Cents (\$5,000.00) for Plaintiff’s Enhancement Payment, subject to Court approval, in recognition of Plaintiff’s general release of claims, contributions to the Lawsuit, and service to the Settlement Class. In the event that the Court reduces or does not approve the requested Enhancement Payment, the Settlement Agreement remains in full force and effect, Plaintiff shall not have the right to revoke the settlement for that reason, and it shall remain binding;
- (4) Up to one-third of the Maximum Settlement Amount in attorneys’ fees, which is currently estimated to be Eighty-Three Thousand Two Hundred Fifty Dollars and Zero Cents (\$83,250.00), plus up to Eight Thousand Dollars and Zero Cents (\$8,000.00) in verified costs and expenses related to the Lawsuit as supported by declaration. In the event that the Court reduces or does not approve Class Counsel’s requested fees and costs, the Settlement Agreement remains in full force and effect, Plaintiff shall not have the right to revoke the settlement for that reason, and it shall remain binding; and
- (5) Five Thousand Dollars and Zero Cents (\$5,000.00) of the Maximum Settlement Amount has been set aside by the Parties as PAGA civil penalties. Per Labor Code § 2699(i), seventy-five percent (75%) of such penalties, or Three Thousand Seven Hundred Fifty Dollars and Zero Cents (\$3,750.00) will be payable to the Labor & Workforce Development Agency (“LWDA”), and the remaining twenty-five percent (25%), or One Thousand Two Hundred Fifty Dollars and Zero Cents (\$1,250.00) will be payable to the Settlement Class as the “PAGA Amount.”

C. Defendant’s share of payroll taxes shall be paid by Defendant separately from, and in addition to, the Maximum Settlement Amount.

D. **Escalator Clause.** Defendant represents that as of December 18, 2020, there were approximately 4,973 Settlement Class Members. If, at the time of preliminary approval, the number of Settlement Class Members has increased by 5% or more (i.e., if there are 5,221 or more Settlement Class Members), then Defendant shall increase the Maximum Settlement Amount on a pro-rata basis equal to the increase in class size (e.g., if the actual class size were 15% greater than 4,973 Settlement Class Members, Defendant will increase the Maximum Settlement Amount by 15%).

4. **Settlement Award Procedures.** Settlement Class Members are not required to submit a claim form to receive their Individual Settlement Award. Individual Settlement Awards will be determined and paid as follows:
- A. The Settlement Administrator shall first deduct from the Maximum Settlement Amount the amounts approved by the Court for the Settlement Administrator's fees and expenses, Plaintiff's Enhancement Payment, Class Counsel's attorneys' fees, Class Counsel's costs and expenses, and the LWDA's share of the PAGA payment. The remaining amount shall be known as the "Net Settlement Fund."
 - B. From the Net Settlement Fund, the Settlement Administrator will calculate each Settlement Class Member's Individual Settlement Award.

Settlement Awards shall be based on the following formula:

- i. Waiting Time Amount: Twenty-five percent (25%) of the Net Settlement Fund shall be designated as the "Waiting Time Amount." Each participating Settlement Class Member who separated their employment from Yergat at any time from May 12, 2017, to December 18, 2020, shall receive an equal, pro-rata share of the Waiting Time Amount.
- ii. Wage Statement Amount: Fifteen percent (15%) of the Net Settlement Fund shall be designated as the "Wage Statement Amount." Each participating Settlement Class Member who was employed by Yergat at any time from May 12, 2019 to December 18, 2020, shall receive a portion of the Wage Statement Amount proportionate to the number of pay periods that he or she worked during the period from May 12, 2019 to December 18, 2020.
- iii. PAGA Amount: Each participating Settlement Class Member who was employed by Yergat at any time from May 12, 2019, to December 18, 2020, shall receive a portion of the One Thousand Two Hundred Fifty Dollars and Zero Cents (\$1,250.00) of the Net Settlement Fund that has been designated as the "PAGA Amount" proportionate to the number of pay periods that he or she worked during the period from May 12, 2019, to December 18, 2020.
- iv. The remainder of the Net Settlement Fund shall be distributed to each participating Settlement Class Member based on their proportionate share of Eligible Workweeks (defined below) during the Class Period, by multiplying the remaining Net Settlement Fund by a fraction, the numerator of which is the participating Settlement Class Member's Eligible Workweeks during the Class Period, and the denominator of which is the total Eligible Workweeks of all participating Settlement Class Members during the Class Period.

An "Eligible Workweek" shall be any workweek in which the Class Member worked at least one day during the workweek based on Yergat's records.

- C. Within twenty-one (21) days following the funding of the Maximum Settlement Amount with the Settlement Administrator by Yergat, the Settlement Administrator will calculate Individual Settlement Award amounts and will prepare and mail Individual Settlement Awards to participating Settlement Class Members.
- D. For purposes of calculating applicable taxes and withholdings for the Settlement Class Members, twenty percent (20%) of each Individual Settlement Award shall be designated as wages subject to W-2 reporting and normal payroll withholdings; the remaining eighty percent (80%) of each Individual Settlement Award shall be designated as penalties and interest subject to IRS Form 1099 reporting with no withholdings. Notwithstanding the treatment of the payments to each Settlement Class Member above, none of the payments called for by this Settlement Agreement, including the wage portion, are to be treated as earnings, wages, pay or compensation for any purpose of any applicable benefit or retirement plan, unless required by such plans.
- E. Each Settlement Class Member who receives an Individual Settlement Award must negotiate the settlement check within one hundred eighty (180) days from the date of issuance. The one hundred eighty (180) day expiration of the settlement checks will be pre-printed on the front of the settlement check. Any funds payable to Settlement Class Members whose checks are not negotiated within one hundred eighty (180) days period will not be reissued and will be transferred to the State of California to be held pursuant to the Unclaimed Property Law, California Civil Code § 1500 *et seq.*, in the name of the Settlement Class Member to whom the check was issued, until such time that the property is claimed.
- F. Neither Plaintiff nor Yergat shall bear any liability for lost or stolen checks, forged signatures on checks, or unauthorized negotiation of checks. Unless responsible by her or its own acts of omission or commission, the same is true for the Settlement Administrator.

5. **Class Counsel's Attorneys' Fees and Litigation Costs.** Yergat will not object to a request for a total award of attorneys' fees to Class Counsel of one-third of the Maximum Settlement Amount, which is currently estimated to be Eighty-Three Thousand Two Hundred Fifty Dollars and Zero Cents (\$83,250.00) plus up to Eight Thousand Dollars and Zero Cents (\$8,000.00) in verified costs and expenses related to the Lawsuit as supported by declaration. These amounts will cover any and all work performed and any and all costs incurred in connection with this litigation, including without limitation: all work performed and all costs incurred to date; and all work to be performed and costs to be incurred in connection with obtaining the Court's approval of this Settlement Agreement, including any objections raised, responses to any intervenors and any appeals necessitated by those objections or intervenors. Class Counsel will be issued an IRS Form 1099 by the Settlement Administrator when it pays the fee award as approved by the Court.

6. **Plaintiff's Enhancement Payment.** Yergat will not object to a request for a Class Representative Enhancement Payment for Plaintiff of Five Thousand Dollars and Zero Cents (\$5,000.00) in exchange for the general release of her claims, her time and risks in prosecuting this case, and her service to the Settlement Class. This payment will be in addition to Plaintiff's

Individual Settlement Award as a Settlement Class Member and shall be reported on an IRS Form 1099 by the Settlement Administrator. It is the intent of the Parties that the Enhancement Payment to the Plaintiff is for her services in connection with this Lawsuit and is not wages, therefore the Settlement Administrator shall not withhold any taxes from the Enhancement and shall report it on an IRS Form 1099, which shall be provided to Plaintiff and to the pertinent taxing authorities as required by law. Although it is the contemplation of the Parties that the Enhancement does not represent wages, the Internal Revenue Service, the California Franchise Tax Board, or some other taxing authority may take the position that some or all of the Enhancements constitute wages for income tax and withholding purposes. Plaintiff agrees to assume the responsibility of remitting to the Internal Revenue Service, the California Franchise Tax Board, and any other relevant taxing authority the amounts required by law, if any, to be withheld by Yergat from the Enhancement paid under this Settlement Agreement. In addition, Plaintiff shall hold Yergat, Released Parties and Class Counsel harmless and indemnify Yergat, Released Parties and Class Counsel for all taxes, interest, penalties, other payments and costs, incurred by Yergat by reason of any claims relating to the non-withholding of taxes from the Enhancement.

7. **Settlement Administrator.** Yergat will not object to the appointment of ILYM Group, Inc. as Settlement Administrator nor to Class Counsel seeking Court approval to pay up to Thirty Thousand Dollars and Zero Cents (\$30,000.00) from the Maximum Settlement Amount for its services. The Settlement Administrator shall be responsible for sending all required notices, calculating the Net Settlement Fund, calculating each Class Member's Individual Settlement Award amount, preparing all checks and mailings and disbursing all residuals resulting from uncashed settlement checks as set forth in Section 4(E). The Settlement Administrator shall be authorized to pay itself from the Maximum Settlement Amount by Class Counsel only after checks have been mailed to all Settlement Class Members.

8. **Preliminary Approval.** Plaintiff shall apply to the Court for the entry of an Order:

- A. Conditionally certifying the Settlement Class for purposes of this Settlement Agreement;
- B. Appointing Daniel J. Brown of Stansbury Brown Law as Class Counsel;
- C. Appointing Maria E. Herrera De Quilo as Class Representative for the Settlement Class;
- D. Approving ILYM Group, Inc. as Settlement Administrator;
- E. Preliminarily approving this Settlement Agreement and its terms as fair, reasonable, and adequate;
- F. Approving the form and content of the Class Notice Packet (which is comprised of the Class Notice, Request for Exclusion Form, and Objection Form), and directing the mailing of same; and
- G. Scheduling a Final Approval hearing.

9. **Notice Procedures.** Following preliminary approval; the Settlement Class shall be notified as follows:

- A. Within fourteen (14) days after entry of an order preliminarily approving this Settlement Agreement, Yergat will provide the Settlement Administrator with a class list including the names, last known addresses, and social security numbers (in electronic format) of Settlement Class Members, as well as the total workweeks worked by each member of the Settlement Class during the Class Period.
- B. Within seven (7) days from receipt of the class list information, the Settlement Administrator shall: (i) run the names of all Settlement Class Members through the National Change of Address ("NCOA") database to determine any updated addresses for Settlement Class Members; (ii) update the addresses of any Settlement Class Member for whom an updated address was found through the NCOA search; and (iii) mail the Notice Packet to each Settlement Class Member at their last known address or at the updated address found through the NCOA search, and retain proof of mailing.
- C. The Settlement Administrator shall use its best professional efforts, including utilizing a "skip trace," to track any Settlement Class Member's mailing returned as undeliverable, and will re-send the Notice Packet promptly upon identifying updated mailing addresses through such efforts. The address identified by the Settlement Administrator as the current mailing address shall be presumed to be the best mailing address for each Settlement Class Member.
- D. Any Notice Packets returned to the Settlement Administrator as non-delivered on or before the Response Deadline (defined below) shall be re-mailed to the forwarding address affixed thereto. If no forwarding address is provided, the Settlement Administrator shall make reasonable efforts, including utilizing a "skip trace," to obtain an updated mailing address within five (5) business days of receiving the returned Notice Packet. If an updated mailing address is identified, the Settlement Administrator shall resend the Notice Packet to the Settlement Class Member immediately, and in any event within three (3) business days of obtaining the updated address. Settlement Class Members to whom Notice Packets are re-sent after having been returned as undeliverable to the Settlement Administrator shall have fourteen (14) days from the date of re-mailing, or until the Response Deadline has expired, whichever is later, to mail a Request for Exclusion, challenge or objection.
- E. **Opt-Out/Request for Exclusion Procedures.** Any Settlement Class Member who wishes to opt-out of the Settlement must complete and mail a Request for Exclusion (defined below) to the Settlement Administrator within sixty (60) days of the date of the initial mailing of the Notice Packets (the "Response Deadline").
 - i. The Request for Exclusion Form must: (1) contain the name, address, telephone number of the Settlement Class Member; (2) contain a statement that the Settlement Class Member wishes to be excluded from the class settlement; (3)

be signed by the Settlement Class Member; and (4) be postmarked by the Response Deadline and mailed to the Settlement Administrator at the address specified in the Class Notice. If the Request for Exclusion Form fails to comply with items (1)-(3), it will not be deemed a valid Request for Exclusion from this settlement, except a Request for Exclusion Form not containing a Class Member's telephone number will be deemed valid. The date of the postmark on the Request for Exclusion Form, shall be the exclusive means used to determine whether a Request for Exclusion has been timely submitted. Any Settlement Class Member who requests to be excluded from the Settlement Class will not be entitled to any recovery under this Settlement Agreement and will not be bound by the terms of the settlement (although the PAGA settlement and release provisions will apply to each such individual, and such individual shall be entitled to their share of the PAGA Amount) or have any right to object, intervene, appeal or comment thereon. Any Settlement Class Member who does not submit a Request for Exclusion Form is automatically deemed a participating Settlement Class Member.

- F. **Objections.** Members of the Settlement Class who do not request exclusion may object to this Settlement Agreement as explained in the Class Notice by filing a written objection with the Settlement Administrator (who shall serve all objections as received on Class Counsel and Defendant's counsel as well as filing them with the Court). Defendants' counsel and Class Counsel shall file any responses to objections no later than the deadline to file the Motion for Final Approval, unless filed within ten (10) days of the Motion for Final Approval filing deadline, in which case Defendant's counsel and Class Counsel shall have ten (10) days to respond. To be valid, any objection must: (1) contain the objecting Settlement Class member's full name and current address; (2) include all objections and the factual and legal bases for same; (3) include any and all supporting papers, briefs, written evidence, declarations, and/or other evidence; and (4) Objections must be postmarked on or before the Response Deadline.
- G. **Challenges to Individual Settlement Award Calculations.** Each Notice Packet mailed to a Settlement Class Member shall disclose the amount of the Settlement Class Member's estimated Settlement Award as well as all of the information that was used from Defendant's records in order to calculate the Settlement Award, including the Settlement Class Member's number of Eligible Workweeks during the Class Period, the number of pay periods worked during the PAGA/Wage Statement period, and whether the Settlement Class Member's employment ended during the period of May 12, 2017 and December 18, 2020. Settlement Class Members will have the opportunity, should they disagree with Yergat's records regarding the number of Eligible Workweeks and/or pay periods stated in their Notice Packet and/or whether their employment ended between May 12, 2017, and December 18, 2020, to challenge the data provided. In order to challenge Yergat's data, the Settlement Class Member must provide documentation and/or an explanation demonstrating that Yergat's data is incorrect and evidencing the correct number of Eligible Workweeks and or pay periods that the Settlement Class Member believes they should have been credited with and/or evidence of the

correct date their employment ended. Any such dispute, including any supporting documentation, must be mailed to the Settlement Administrator and postmarked by the Response Deadline. The Settlement Administrator shall provide a copy of the challenge and any supporting documentation to counsel for the Parties within five (5) days of receipt.

- H. **Dispute Resolution.** The Settlement Administrator shall have the responsibility of resolving all disputes that arise during the settlement administration process, including, without limitation, disputes (if any) regarding the calculation of Settlement Class Member's Individual Settlement Awards, the allocation of W-2 wages, and the number of Eligible Workweeks and/or pay periods. Where the information submitted by Yergat from its records differs from the information submitted by the Settlement Class Member, the Settlement Administrator shall request a conference call between the Settlement Administrator, Class Counsel, and defense counsel to discuss and resolve the dispute. In advance of the conference call, the Settlement Administrator shall email copies of all available information to all counsel. After consulting with the Parties to determine whether an adjustment is warranted, the Settlement Administrator will finally determine the eligibility for and amount of any Settlement Award. Such determination shall be binding upon the Settlement Class Member and the Parties.

10. **Final Approval Process.** Following preliminary approval and the close of Response Deadline under this Settlement Agreement, Plaintiff shall apply to the Court for entry of an Order:

- A. Granting final approval to the Settlement Agreement and adjudging its terms to be fair, reasonable, and adequate;
- B. Approving Plaintiff's application for Settlement Administrator's fees and expenses, Plaintiff's Enhancement Payment, Class Counsel's attorneys' fees, Class Counsel's costs and expenses, and the LWDA's share of the PAGA payment; and
- C. Entering judgment pursuant to California Rule of Court 3.769.

11. **Non-Admission.** Yergat denies that it has engaged in any unlawful activity, that it has failed to comply with the law in any respect, that it has any liability to anyone under the claims asserted in the Lawsuit, and that but for this settlement a class should not be certified in this Lawsuit. Nothing in this Settlement Agreement is intended or shall be construed as an admission of liability or wrongdoing by Yergat. Nothing in this Settlement Agreement shall operate or be construed as an admission of any liability or that class certification is appropriate in any context other than this settlement. The Parties have entered into this Settlement Agreement to avoid the burden and expense of further litigation. Pursuant to California Evidence Code Section 1152, this Settlement Agreement is inadmissible in any proceeding, except a proceeding to approve, interpret, or enforce this Settlement Agreement. If Final Approval does not occur, the Parties agree that this Settlement Agreement is void, but remains protected by California Evidence Code Section 1152.

12. **Amendments or Modifications.** The Parties may not waive, amend, or modify any provision of this Settlement Agreement except by a written agreement signed by the Parties, and

subject to any necessary Court approval. A waiver or amendment of any provision of this Settlement Agreement will not constitute a waiver of any other provision.

13. **Notices.** All notices, demands, and other communications to be provided concerning this Settlement Agreement shall be in writing and delivered by receipted delivery or by e-mail at the addresses set forth below, or such other addresses as the Parties may designate in writing from time to time:

if to Yergat:

Steven R. Wainess, Esq.
James D. Miller, Esq.
RAIMONDO & ASSOCIATES
A Law Corporation
7110 N Marks, Ave., #104
Fresno, CA 93711
srw@raimondoassociates.com
jdm@raimondoassociates.com

if to Plaintiff:

Daniel J. Brown, Esq.
STANSBURY BROWN LAW
2610 ½ Abbot Kinney Blvd.
Venice, CA 90291
dbrown@stansburybrownlaw.com

14. **Entire Agreement.** This Settlement Agreement contains the entire agreement between the Parties with respect to the transactions contemplated hereby, and supersedes all negotiations, presentations, warranties, commitments, offers, contracts, and writings prior to the date hereof relating to the subject matters hereof.

15. **Counterparts.** This Settlement Agreement may be executed by one or more of the Parties on any number of separate counterparts and delivered electronically, and all of said counterparts taken together shall be deemed to constitute one and the same instrument.

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[SIGNATURES ON FOLLOWING PAGE]

EXECUTION BY PARTIES AND COUNSEL

DATED: 8-20-21

Yergat Packing Company, Inc.

By: Paul Yergat

Its:

DATED: 8/6/2021

Maria E. Herrera De Quilo

By: MARIA E. QUID
Plaintiff and Settlement Class Representative

APPROVED AS TO FORM:

DATED: 8/20/2021

RAIMONDO & ASSOCIATES, A LAW
CORPORATION

By: Steven R. Wainess
Steven R. Wainess
James D. Miller
Attorneys for Defendant

DATED: August 6, 2021

STANSBURY BROWN LAW

By: Daniel J. Brown
Daniel J. Brown
Attorneys for Plaintiff

EXHIBIT 1

STANSBURY BROWN LAW
DANIEL J. BROWN (SBN 307604)
dbrown@stansburybrownlaw.com
2610 ½ Abbot Kinney Blvd.
Venice, CA 90291
Tel: 323-207-5925

Attorneys for Plaintiff

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

MARIA E. HERRERA DE QUILO, as an
individual and on behalf of all others similarly
situated,

Plaintiff,

vs.

YERGAT PACKING COMPANY, INC., a
California corporation; and DOES 1 through
100,

Defendants.

Case No.: MCV085367

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

- (1) MINIMUM WAGE VIOLATIONS
(LABOR CODE §§ 1182.12, 1194,
1194.2, AND 1197);**
- (2) FAILURE TO PAY ALL
OVERTIME WAGES (LABOR
CODE §§ 204, 510, 551, 552, 558,
1194, AND 1198);**
- (3) MEAL PERIOD VIOLATIONS
(LABOR CODE §§ 226.7, 512);**
- (4) REST PERIOD VIOLATIONS
(LABOR CODE §§ 226.7, 516);**
- (5) FAILURE TO REIMBURSE FOR
NECESSARY BUSINESS
EXPENSES (LABOR CODE § 2802);**
- (6) FAILURE TO PROVIDE
ACCURATE, ITEMIZED WAGE
STATEMENTS (LABOR CODE
§ 226 *et seq.*);**
- (7) WAITING TIME PENALTIES
(LABOR CODE §§ 201-203);**
- (8) UNFAIR COMPETITION (BUS &
PROF CODE § 17200 *et seq.*); AND**
- (9) CIVIL PENALTIES UNDER THE
PRIVATE ATTORNEYS GENERAL
ACT (LABOR CODE § 2698 *et seq.*)**

**DEMAND FOR JURY TRIAL
UNLIMITED CIVIL CASE**

1 Plaintiff Maria E. Herrera De Quilo ("Plaintiff"), on behalf of herself and all others
2 similarly situated, hereby brings this Second Amended Class and Representative Action
3 Complaint ("SAC") against Yergat Packing Company, Inc., a California corporation and DOES
4 1 to 100, inclusive (collectively "Defendants"), 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 Complaint for recovery of unpaid wages and penalties under California Business & Professions
8 Code § 17200 *et. seq.*, Labor Code §§ 201-205, 226 *et seq.*, 226.7, 510, 512, 516, 551-552, 558,
9 1182.12, 1194, 1194.2, 1197, 1198, 2802, 2698 *et seq.*; and Industrial Welfare Commission Wage
10 Order 14 ("Wage Order 14"), in addition to seeking declaratory relief and restitution. This
11 Complaint is brought pursuant to California Code of Civil Procedure § 382. This Court has
12 jurisdiction over Defendants' violations of the California Labor Code because the amount in
13 controversy exceeds this Court's jurisdictional minimum.

14 **VENUE**

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

20 **PARTIES**

21 3. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein,
22 Plaintiff was and currently is, a California resident. During the four years immediately preceding
23 the filing of the Complaint in this action and within the statute of limitations periods applicable
24 to each cause of action pled herein, Plaintiff was employed by Defendants as a non-exempt
25 employee. Plaintiff was, and is, a victim of Defendants' policies and/or practices complained of
26 herein, lost money and/or property, and has been deprived of the rights guaranteed by Labor Code
27 §§ 201-205, 226 *et seq.*, 226.7, 510, 512, 516, 558, 1182.12, 1194, 1194.2, 1197, 1198, 2802,
28 2698 *et seq.*; California Business & Professions Code § 17200 *et seq.* ("Unfair Competition

1 Law”); and Wage Order 14, which sets employment standards for Agricultural Occupations.

2 4. Plaintiff is informed and believes, and based thereon alleges, that during the four
3 years preceding the filing of the Complaint and continuing to the present, Defendants did (and
4 continue to do) business by employing seasonal farm labor employees to harvest agricultural
5 commodities in the United States, and employed Plaintiff and other, similarly-situated non-
6 exempt employees within Madera County and the state of California and, therefore, were (and
7 are) doing business in Madera County 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 amend this Complaint when such true names and capacities are discovered. Plaintiff is informed,
12 and believes, and based thereon alleges, that each of said fictitious defendants, whether individual,
13 partners, or corporate, were responsible in some manner for the acts and omissions alleged herein,
14 and proximately caused Plaintiff and the Class (as defined herein) to be subject to the unlawful
15 employment practices, wrongs, injuries and damages complained of herein.

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

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

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

members of the Class.

GENERAL FACTUAL ALLEGATIONS

9. Defendants are in the agricultural business and employ seasonal farm labor employees to harvest agricultural goods. Plaintiff commenced employment with Defendants as a non-exempt farm labor employee on a seasonal basis around April 2019 in the position of “Picker.” Plaintiff would generally work about five to six weeks at a time during her employment with Defendants. Plaintiff was tasked with harvesting grapes and grape leaves for the benefit of the Defendants. Defendants’ credited Plaintiff with working approximately 6.5 to 9.0 hours per day, six days a week. However, in practice, on information and belief, Plaintiff alleges that Defendant did not employ any actual timekeeping practices and at no point was Plaintiff made to confirm or sign off on her hours. As discussed below, Plaintiff usually worked considerably more hours per shift. Defendants have not boarded or lodged Plaintiff during her employment.

10. During Plaintiff’s employment with Defendants, Plaintiff was in most workweeks paid on a piece-rate basis, whereby she was paid a set rate of \$1.20 per pound of grapes and grape leaves. Defendants’ foreperson allegedly recorded the hours Plaintiff worked; however, Plaintiff was only paid an hourly minimum wage if her earned piece-rate compensation did not exceed her minimum wages earned in a pay period. Plaintiff’s shift was generally between the hours of 5:30 a.m. and 3:30 p.m., meaning that she worked at least approximately 10.0 hours per day.

11. Plaintiff and other non-exempt employees were not provided all legally required rest periods regardless of whether they were working on a piece-rate or hourly basis. Specifically, when Plaintiff and other non-exempt employees were able to exercise their statutorily authorized rest periods each shift, they were not provided with any remuneration for the time spent on their rest periods at any point during their employment with Defendants. Wage Order 14, § 12 and California Labor Code §§ 226.7 and 516 establish the right of employees to be authorized and permitted to take a paid rest period of at least ten (10) minutes net rest time for each four (4) hour period worked, or major fraction thereof. Defendants seemingly acknowledge their duty to provide paid rest periods as evidenced by Plaintiff’s paycheck numbered 149533 issued on June 1, 2019 where there is a section on the paystub labeled “Brk TM Bo” on each day that Plaintiff

1 worked. However, the paycheck provides for no compensation for these rest periods and only
2 reflects payments for Plaintiff's "hourly" and piece rate wages. Despite Defendants' failure to
3 authorize and permit Plaintiff and other non-exempt employees to take all lawful paid rest periods,
4 due to their uniform and unlawful practices, Defendants never provided Plaintiff and other non-
5 exempt employees with an hour of pay at their regular rate for each rest period violation as
6 required by Labor Code § 226.7. Upon information and belief, during at least a portion of the
7 class period, Defendants maintained no payroll code or another mechanism for the payment of
8 rest period premiums in the event Plaintiff and other non-exempt employees were not authorized
9 to take lawful rest periods.

10 12. Defendants have failed to accurately record and compensate Plaintiff and other
11 non-exempt employees who are compensated on a piece-rate basis for non-productive time. *See*
12 *Gonzalez v. Downtown LA Motors, LP* (2013) 215 Cal.App.4th 36 (holding that a piece-rate
13 compensation structure that does not separately compensate employees for non-productive time
14 violates California minimum wage laws). Plaintiff and other non-exempt employees were
15 required to perform work duties and activities that were not directly compensated on a piece-rate
16 basis. Specifically, employees would arrive for work generally around 5:00 a.m., thirty minutes
17 before the scheduled start of their shifts, so they could fill out all of the necessary pre-shift
18 paperwork and receive their row assignments for the day. Equipment would subsequently be
19 provided to Plaintiff and other non-exempt employees after they had completed this process,
20 which could take approximately thirty minutes to complete, all time that was not recorded and
21 was not compensated by Defendants. Plaintiff alleges that all this wait time constitutes
22 unproductive worktime which must be compensated under California law. Additionally, Plaintiff
23 and the other non-exempt employees would frequently be required to change fields in the middle
24 of their shifts. This was a common occurrence for employees on occasions when they were
25 assigned to smaller fields at the beginning of the day that they could complete more rapidly than
26 the larger fields. Once Plaintiff and the other non-exempt employees would finish picking the
27 smaller fields, they would have to all gather into their own vehicles and drive to a new field to
28 complete the rest of their shifts. The time spent traveling from field to field would take anywhere

1 from approximately 10-15 minutes every instance. Plaintiff alleges that this happened at least
2 three times per week. At no point were Plaintiff and other non-exempt employees ever provided
3 any compensation for the time spent traveling between fields. Furthermore, employees were not
4 compensated for bathroom and water breaks, waiting in lines, and/or other mandatory duties that
5 were not directly compensated on a piece-rate basis. Specifically, Plaintiff and other non-exempt
6 employees were never provided any sort of compensation for time spent waiting to check and
7 weigh their boxes of grapes in-between filling them up. This practice would take anywhere from
8 five to ten minutes each time they went to drop off their boxes, time that was wholly
9 uncompensated. Finally, on days in which it rained during the shifts of Plaintiff and other non-
10 exempt employees; they would be made to wait until the rain stopped before they could go back
11 to work. Plaintiff estimates that this happened at least three times during the 2019 harvesting
12 season. Plaintiff alleges that he and other non-exempt employees would be made to wait as long
13 as an hour before recommencing their work. Once again, at no point were Plaintiff and non-
14 exempt employees compensated for this time spent waiting for the rain to stop. Accordingly,
15 Plaintiff and other non-exempt employees worked at least an additional one hour per shift of non-
16 productive time. However, as evidenced by Plaintiff's check numbered 149533 issued on June
17 01, 2019, Defendants did not compensate Plaintiff for any non-productive time at all.
18 Consequently, Plaintiff alleges that Defendants have not accurately tracked and compensated
19 employees' non-productive time in compliance with Labor Code § 226.2.

20 13. Defendants have also failed to record employees' total hours worked each
21 workday accurately. Specifically, Defendants' forepersons would maintain timecards for all non-
22 exempt employees, but on information and belief, such timecards did not accurately reflect the
23 times that employees began and ended each workday. For example, although Plaintiff would
24 typically work at least 10.0 hours per workday, Plaintiff's wage statements indicated that she
25 typically only worked between approximately 6.5 hours and 9.0 hours per workday, presumably
26 because Plaintiff's wage statements were based on time records that were prepared by
27 Defendants' forepersons, which inaccurately listed she only worked 6.5 hours to 9.0 hours per
28 workday. As a result, Defendants failed to ensure that Plaintiff and other non-exempt employees

1 were being paid at least the minimum wage for all hours actually worked, and failed to ensure
2 that Plaintiff and other non-exempt employees received proper overtime wages for all overtime
3 hours worked, in compliance with Wage Order 14.

4 14. Defendants further failed to pay non-exempt employees all overtime wages,
5 because non-exempt employees worked at least 10.0 hours per day 6 days a week for a total of
6 60.0 hours per week, entitling them to at least 5.0 hours of overtime pay per week pursuant to
7 Wage Order 14.

8 15. Defendants also did not provide Plaintiff and other non-exempt employees with a
9 legally complaint first meal period when they worked shifts in excess of 6.0 hours. Plaintiff and
10 other non-exempt employees would be entitled to take their lunch at 11:00 a.m. when the
11 “checkers”, who were paid on an hourly basis, would take their lunch. However due to the
12 pressures to complete all of their work within narrow time frames set by Defendants, Plaintiff and
13 other non-exempt employees would only take 15-20 minutes maximum for their meal periods, if
14 at all. Defendants were not only aware of, but actively encouraged this practice. Further,
15 Defendants failed to provide second meal periods when non-exempt employees worked shifts in
16 excess of 10.0 hours. Upon information and belief, Defendants’ forepersons did not accurately
17 record the beginning and ending of each meal period on the timecards. Despite Defendants’
18 failure to provide Plaintiff and other non-exempt employees with all lawful meal periods due to
19 their uniform and unlawful practices, Defendants never provided Plaintiff and other non-exempt
20 employees with an hour of pay at their regular rate for each meal period violation as required by
21 Labor Code § 226.7.

22 16. Defendants failed to adequately reimburse Plaintiff for all reasonable and
23 necessary work expenditures, including but not limited to, gas and mileage incurred on the
24 instances they would have to drive to new fields in the middle of their shifts.

25 17. As a result of Defendants’ failure to accurately compensate Plaintiff and other
26 non-exempt employees for non-productive time, failure to pay all minimum and overtime wages,
27 and failure to provide all required meal periods and authorize all rest periods or pay premium pay
28 in lieu thereof, Defendants have maintained inaccurate payroll records, and issued inaccurate

1 wage statements.

2 18. As a further result of Defendants' failure to pay all minimum and overtime wages,
3 meal and failure to provide all required meal periods and authorize all rest periods or pay premium
4 pay in lieu thereof, Defendants failed to pay all wages owed to Plaintiff upon her separation of
5 employment from Defendants.

6 19. Additionally, Yergat Packing Co, Inc. is a farm labor contractor subject to the
7 requirements of Labor Code § 205, which requires that employees be paid weekly, on a business
8 day designated in advance, for all wages earned up to and including the fourth day before the
9 scheduled payday. However, Defendants pay their employees on a delay of five days or more, in
10 violation of the "fourth day" requirement found in Labor Code § 205. For example, Plaintiff's
11 check numbered 149533 that represented the pay period between May 20, 2019 and May 26, 2019
12 was not issued to Plaintiff until five days afterwards on June 1, 2019.

13 **CLASS ACTION ALLEGATIONS**

14 20. **Class Definition:** Plaintiff brings this action on behalf of herself and the following
15 Class pursuant to § 382 of the Code of Civil Procedure:

- 16 a. All of Defendants' current and former non-exempt employees in California who
17 were subject to the requirements of Wage Order 14 and did not sign an arbitration
18 agreement during the time period of May 12, 2016 to December 18, 2020.

19 21. **Numerosity/Ascertainability:** The members of the Class are so numerous that
20 joinder of all members would be unfeasible and not practicable. The membership of the Class is
21 unknown to Plaintiff at this time; however, it is estimated that the members of the Class number
22 greater than one hundred (100) individuals. The identity of such membership is readily
23 ascertainable via inspection of Defendants' employment records.

24 22. **Common Questions of Law and Fact Predominate/Well Defined Community**
25 **of Interest:** There are common questions of law and fact as to Plaintiff and all other similarly
26 situated employees, which predominate over questions affecting only individual members. Those
27 common questions include, without limitation:

- 28 i. Whether Defendants correctly compensated employees for rest periods pursuant

to Labor Code § 226.2;

- ii. Whether Defendants paid all minimum wages owed for all hours worked to members of the Class pursuant to Labor Code §§ 118.2, 1194, 1194.2, and 1197;
- iii. Whether Defendants violated the applicable Labor Code provisions, including, but not limited to, §§ 510 and 1194 and Wage Order 14 by requiring members of the Class to perform overtime work and not paying for said work in accordance with the overtime laws of the State of California;
- iv. Whether Defendants' timekeeping policies/practices resulted in the failure to properly compensate members of the Class;
- v. Whether Defendants authorized and permitted legally compliant rest periods to members of the Class pursuant to Labor Code §§ 226.7 and 516;
- vi. Whether Defendants provided all legally compliant meal periods to members of the Class pursuant to Labor Code §§ 226.7 and 512;
- vii. Whether Defendants failed to reimburse members of the Class for business expenditures necessarily incurred in the performance of their duties;
- viii. Whether Defendants provided accurate, itemized wage statements to members of the Class; and
- ix. Whether Defendants' policies and/or practices for the timing and amount of payment of final wages to members of the Class at the time of separation from employment were lawful.

23. **Predominance of Common Questions:** Common questions of law and fact predominate over questions that affect only individual members of the Class. The common questions of law set forth above are numerous and substantial and stem from Defendants' policies and/or practices applicable to each individual class member, such as Defendants' uniform piece-rate pay structure, meal and rest period policies and practices, timekeeping policies and practices, non-reimbursement, wage statement, and payment of final wages policies and practices. As such, the common questions predominate over individual questions concerning each individual class member's showing as to her or her eligibility for recovery or as to the amount of her or her

1 damages.

2 24. **Typicality:** The claims of Plaintiff are typical of the claims of the Class because
3 Plaintiff was employed by Defendants as a non-exempt employee in California during the
4 statute(s) of limitations period applicable to each cause of action pled in the Complaint. As alleged
5 herein, Plaintiff, like the members of the Class, was paid on a piece-rate and hourly basis, was
6 subject to Defendants' meal and rest period and timekeeping policies and practices, was subjected
7 to Defendants' unlawful failure to reimburse business expenses, was furnished with inaccurate
8 and incomplete wage statements, and was not paid all wages earned at the time of her separation
9 of employment.

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

16 26. **Superiority:** The California Labor Code is broadly remedial in nature and serves
17 an important public interest in establishing minimum working conditions and standards in
18 California. These laws and labor standards protect the average working employee from
19 exploitation by employers who have the responsibility to follow the laws and who may seek to
20 take advantage of superior economic and bargaining power in setting onerous terms and
21 conditions of employment. The nature of this action and the format of laws available to Plaintiff
22 and members of the Class make the class action format a particularly efficient and appropriate
23 procedure to redress the violations alleged herein. If each employee were required to file an
24 individual lawsuit, Defendants would necessarily gain an unconscionable advantage since they
25 would be able to exploit and overwhelm the limited resources of each individual plaintiff with
26 their vastly superior financial and legal resources. Moreover, requiring each member of the Class
27 to pursue an individual remedy would also discourage the assertion of lawful claims by employees
28 who would be disinclined to file an action against their former and/or current employer for real

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

13 **FIRST CAUSE OF ACTION**

14 **MINIMUM WAGE VIOLATIONS**

15 **(AGAINST ALL DEFENDANTS)**

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

17 28. Wage Order 14, § 4 and California Labor Code §§ 1197 and 1182.12 establish the
18 right of employees to be paid minimum wages for all hours worked in amounts set by state law.
19 Labor Code §§ 1194(a) and 1194.2(a) provide that an employee who has not been paid the legal
20 minimum wage as required by Labor Code § 1197 may recover the unpaid balance together with
21 attorneys' fees and costs of suit, as well as liquidated damages in an amount equal to the unpaid
22 wages and interest accrued thereon. At all relevant times herein, Defendants failed to conform
23 their pay practices to the requirements of the law by failing to pay Plaintiff and the Class for all
24 hours actually worked including, but not limited to, all hours they were subject to the control of
25 Defendants and/or suffered or permitted to work under the California Labor Code and Wage
26 Order 14.

27 29. California Labor Code § 1198 makes unlawful the employment of an employee
28 under conditions that the IWC prohibits. California Labor Code §§ 1194(a) and 1194.2(a) provide

1 that an employer who has failed to pay its employees the legal minimum wage is liable to pay
2 those employees the balance of the unpaid wages as well as liquidated damages in an amount
3 equal to the wages due and interest thereon.

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

9 31. Defendants' practice and uniform administration of corporate policy regarding
10 illegal employee compensation is unlawful and creates an entitlement to recovery by Plaintiff and
11 members of the Class in a civil action for the unpaid amount of minimum wages, liquidated
12 damages, including interest thereon, statutory penalties, and attorneys' fees and costs of suit
13 according to California Labor Code §§ 204, 558, 1194, *et seq.*, 1197, 1198 and Code of Civil
14 Procedure § 1021.5.

15 **SECOND CAUSE OF ACTION**

16 **FAILURE TO PAY ALL OVERTIME WAGE**

17 **(AGAINST ALL DEFENDANTS)**

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

19 33. This cause of action is brought pursuant to Labor Code §§ 204, 510, 558, 1194,
20 and 1198, which provide that non-exempt employees are entitled to overtime wages for all
21 overtime hours worked, and provide a private right of action for the failure to pay all overtime
22 compensation for overtime work performed.

23 34. At all times relevant herein, Defendants were required to properly compensate
24 Plaintiff and members of the Class for all overtime hours worked pursuant to California Labor
25 Code § 1194 and Wage Order 14. Wage Order 14, § 3 requires an employer to pay overtime
26 wages when an employee's hours worked cross certain thresholds or meet certain criteria set forth
27 in the Wage Order.

28 35. At all times relevant herein, Defendants caused Plaintiff and other non-exempt

employees to work overtime hours but did not compensate Plaintiff or members of the Class at one and one-half times their regular rate of pay for such hours.

36. The foregoing policies and practices are unlawful and create entitlement to recovery by Plaintiff and the Class in a civil action for the unpaid amount of overtime premiums owing, including interest thereon, statutory and civil penalties, and attorneys' fees and costs of suit according to California Labor Code §§ 204, 510, 558, 1194, and 1198, Wage Order 14, and Code of Civil Procedure § 1021.5.

THIRD CAUSE OF ACTION

MEAL PERIOD VIOLATIONS

(AGAINST ALL DEFENDANTS)

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

38. Plaintiff is informed and believes, and based thereon alleges, that Defendants failed in their affirmative obligation to provide all of their non-exempt employees in California, including Plaintiff and members of the Class, with all legally compliant meal periods in accordance with the mandates of the California Labor Code and Wage Order 14, § 11. Despite Defendants' violations, Defendants did not pay an additional hour of pay to Plaintiff and members of the Class at their respective regular rates of compensation, in accordance with California Labor Code §§ 226.7, and 512.

39. As a result, Defendants are responsible for paying premium compensation for meal period violations including interest thereon, as well as statutory penalties, civil penalties, and costs of suit, pursuant to Labor Code §§ 226.7, 512, and 558, Wage Order 14, and Civil Code §§ 3287(b) and 3289.

FOURTH CAUSE OF ACTION

REST PERIOD VIOLATIONS

(AGAINST ALL DEFENDANTS)

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

41. Wage Order 14, § 12 and California Labor Code §§ 226.7 and 516 establish the right of employees to be authorized and permitted to take a paid rest period of at least ten (10)

1 minutes net rest time for each four (4) hour period worked, or major fraction thereof.

2 42. As alleged herein, Defendants failed to authorize and permit Plaintiff and members
3 of the Class to take all legally compliant rest periods.

4 43. The foregoing violations create an entitlement to recovery by Plaintiff and
5 members of the Class in a civil action for the unpaid amount of rest period premiums owing,
6 including interest thereon, as well as statutory penalties, civil penalties, and costs of suit according
7 to California Labor Code §§ 226.7, 516, 558, and Civil Code §§ 3287(b) and 3289.

8 **FIFTH CAUSE OF ACTION**

9 **FAILURE TO REIMBURSE BUSINESS EXPENSES**

10 **(AGAINST ALL DEFENDANTS)**

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

12 45. At all relevant times herein, Defendants were subject to Labor Code § 2802, which
13 states that “an employer shall indemnify her or her employees for all necessary expenditures or
14 losses incurred by the employee in direct consequence of the discharge of her or her duties, or of
15 her or her obedience to the directions of the employer...”

16 46. Due to Defendants’ unlawful policy and practice of requiring employees to incur
17 costs associated with gas and mileage in the performance of their job duties, Defendants have
18 violated Labor Code § 2802.

19 47. Plaintiff and members of the Class are entitled to attorneys’ fees and costs of suit
20 pursuant to Labor Code § 2802(c) for bringing this action.

21 48. Pursuant to Labor Code § 2802(b), any action brought for the reimbursement of
22 necessary expenditures carries interest at the same rate as judgments in civil actions. Thus,
23 Plaintiff and members of the Class are entitled to interest, which shall accrue from the date on
24 which they incurred the initial necessary expenditure.

25 **SIXTH CAUSE OF ACTION**

26 **WAGE STATEMENT VIOLATIONS**

27 **(AGAINST ALL DEFENDANTS)**

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

50. Plaintiff is informed and believes, and based thereon alleges, that Defendants knowingly and intentionally, as a matter of uniform practice and policy, failed to furnish Plaintiff and the Class with accurate, itemized wage statements that included, among other requirements, accurate total gross wages earned, meal and rest period premiums, and total net wages earned in violation of Labor Code §226 *et seq.*

51. Defendants' failure to furnish Plaintiff and the 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 of their meal and rest period premiums, and deprived them of the information necessary to identify discrepancies in Defendants' reported data.

52. Defendants' failures created an entitlement to Plaintiff and members of the Class in a civil action for damages and/or penalties pursuant to Labor Code § 226, including statutory penalties civil penalties, reasonable attorneys' fees, and costs according to suit pursuant to Labor Code § 226 *et seq.*

SEVENTH CAUSE OF ACTION

WAITING TIME PENALTIES

(AGAINST ALL DEFENDANTS)

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

54. This cause of action is brought pursuant to Labor Code §§ 201-203, which require an employer to pay all wages immediately at the time of termination of employment in the event the employer discharges the employee or the employee provides at least 72 hours of notice of her/her intent to quit. In the event the employee provides less than 72 hours of notice of her/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.

55. Defendants failed to timely pay Plaintiff and members of the Class all final wages due to them at the time of their separation including, among other things, unpaid amounts for rest and recovery periods and non-productive time, underpaid overtime and minimum wages owed, and meal and rest period premium wages. Further, Plaintiff is informed and believes, and

1 based thereon alleges, that as a matter of uniform policy and practice, Defendants continue to
2 fail to pay members of the Class all earned wages at the end of employment in a timely manner
3 pursuant to the requirements of Labor Code §§ 201-203. Defendants' failure to pay all final
4 wages was willful within the meaning of Labor Code § 203.

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

10 **EIGHTH CAUSE OF ACTION**

11 **UNFAIR COMPETITION**

12 **(AGAINST ALL DEFENDANTS)**

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

14 58. Defendants have engaged and continue to engage in unfair and/or unlawful
15 business practices in California in violation of California Business and Professions Code § 17200
16 *et seq.*, by failing to pay Plaintiff and the Class all overtime and minimum wages, failing to
17 provide all required meal periods, failing to authorize and permit all required rest periods, failing
18 to pay meal and rest period premium wage payments, failing to reimburse for necessary business
19 expenditures, failing to furnish accurate, itemized wage statements, and willfully failing to
20 timely pay Plaintiff and members of the Class all final wages upon separation of employment.

21 59. Defendants' utilization of these unfair and/or unlawful business practices deprived
22 Plaintiff and continues to deprive members of the Class of compensation to which they are
23 legally entitled, constitutes unfair and/or unlawful competition, and provides an unfair advantage
24 over Defendants' competitors who have been and/or are currently employing workers and
25 attempting to do so in honest compliance with applicable wage and hour laws.

26 60. Because Plaintiff is a victim of Defendants' unfair and/or unlawful conduct alleged
27 herein, Plaintiff for herself and on behalf of the members of the Class, seeks full restitution of
28 monies, as necessary and according to proof, to restore any and all monies withheld, acquired

and/or converted by Defendants pursuant to Business and Professions Code §§ 17203 and 17208.

61. The acts complained of herein occurred within the last four years immediately preceding the filing of the Complaint in this action.

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

NINTH CAUSE OF ACTION

PRIVATE ATTORNEYS GENERAL ACT

(AGAINST ALL DEFENDANTS)

63. Plaintiff re-alleges and incorporates by reference all prior paragraphs as though fully set forth herein.

64. Defendants have committed several Labor Code violations against Plaintiff, members of the Class, and other aggrieved employees. Plaintiff, an "aggrieved employee" within the meaning of Labor Code § 2698 et seq., acting on behalf of herself and other aggrieved employees, brings this representative action against Defendants to recover the civil penalties due to Plaintiff, the members of the Class, other aggrieved employees, and the State of California according to proof pursuant to Labor Code § 558 and § 2699 (a) and (f) including, but not limited to: (1) \$100.00 for each initial violation for each failure to pay each employee and \$200 for each subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) \$50.00 for each initial violation and \$100 for each subsequent violation pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial violation and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1 per employee per pay period; (4) \$250.00 for each initial violation and \$1,000.00 for each subsequent violation pursuant to Labor Code § 226.3 per employee per pay period; and/or (5) \$100.00 for each initial violation and \$200 for each subsequent violation per employee per pay period for those violations of the Labor Code for

1 which no civil penalty is specifically provided, based on the following Labor Code violations:

- 2 a. Failing to pay minimum wages for all hours worked to Plaintiff, the Class, and
3 other similarly aggrieved employees in violation of Labor Code §§ 1182.12,
4 1194, 1194.2, and 1197;
- 5 b. Failing to pay Plaintiff, the Class, and other aggrieved employees all earned
6 overtime compensation in violation of Labor Code §§ 204, 510, 558, 1194, and
7 1198;
- 8 c. Failing to provide all legally required meal periods, and failing to pay meal
9 period premium pay, to Plaintiff, the Class, and other similarly aggrieved
10 employees in violation of Labor Code §§ 226.7, 512, 558, and 1198;
- 11 d. Failing to timely pay all final wages and compensation earned by Plaintiff, the
12 Class, and other aggrieved employees at the time of separation in violation of
13 Labor Code §§ 201, 202, and 203;
- 14 e. Failing to authorize and permit all legally required rest periods, and failing to
15 pay rest period premiums, to Plaintiff, the Class, and other similarly aggrieved
16 employees in violation of Labor Code §§ 226.7, 512, and 558;
- 17 f. Failing to furnish Plaintiff, the Class, and other aggrieved employees with
18 complete, accurate, itemized wage statements in violation of Labor Code § 226;
- 19 g. Failing to pay non-exempt employees all earned wages at least twice during
20 each calendar month in violation of Labor Code § 204;
- 21 h. Failing to maintain accurate records on behalf of Plaintiff and other aggrieved
22 employees in violation of Labor Code § 1174;
- 23 i. Failing to compensate Plaintiff and other aggrieved employees at least once
24 every week on a business day designated in advance and including all wages
25 earned up to and including the fourth day before such payday in violation of
26 Labor Code § 205; and
- 27 j. Failing to reimburse Plaintiff, the Class, and other aggrieved employees for all
28 necessary work expenses incurred in violation of Labor Code §§ 2802 and 2804.

65. On May 13, 2020, Plaintiff notified Defendants via certified mail, and notified the

California Labor and Workforce Development Agency (“LWDA”) via its website, of Defendants’ violations of the California Labor Code and Plaintiff’s intent to bring a claim for civil penalties under California Labor Code § 2698 et seq. with respect to violations of the California Labor Code identified in Paragraph 64 (a)-(j). Now that sixty-five days have passed from Plaintiff’s notifying Defendants and the LWDA of these violations, and the LWDA has not provided notice that it intends to investigate the violations, Plaintiff has exhausted her administrative requirements for bringing a claim under the Private Attorneys General Act with respect to these violations.

66. Plaintiff was compelled to retain the services of counsel to file this court action to protect her interests and the interests of other similarly aggrieved employees, and to assess and collect the civil penalties owed by Defendants. Plaintiff has thereby incurred attorneys’ fees and costs, which he is entitled to receive under California Labor Code § 2699(g).

PRAYER

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

1. For an order certifying the proposed Class;
2. For an order appointing Plaintiff as representative of the Class;
3. For an order appointing Counsel for Plaintiff as Counsel for the Class;
4. Upon the First Cause of Action, for payment of minimum wages, liquidated damages, and penalties according to proof pursuant to Labor Code §§ 1182.12, 1194, 1194.2, and 1197;
5. Upon the Second Cause of Action, for compensatory, consequential, general, and special damages according to proof pursuant to Labor Code §§ 204, 510, 558, 1194, and 1198;
6. Upon the Third Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code §§ 226.7, 512, and 558;
7. Upon the Fourth Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code §§ 226.7, 516, and 558;
8. Upon the Fifth Cause of Action, for compensatory, consequential, general, and

special damages according to proof pursuant to Labor Code § 2802;

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

10. Upon the Seventh Cause of Action, for statutory waiting time penalties pursuant to Labor Code § 201-203;

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

12. Upon the Ninth Cause of Action, for (1) \$100.00 for each initial violation for each failure to pay each employee and \$200 for each subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) \$50.00 for each initial violation and \$100 for each subsequent violation pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial violation and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1 per employee per pay period; (4) \$250.00 for each initial violation and \$1,000.00 for each subsequent violation pursuant to Labor Code § 226.3 per employee per pay period; and/or (5) \$100.00 for each initial violation and \$200 for each subsequent violation per employee per pay period for the violations of the Labor Code Sections cited in Labor Code § 2699.5;

13. Prejudgment interest on all due and unpaid wages pursuant to California Labor Code § 218.6 and Civil Code §§ 3287 and 3289;

14. On all causes of action, for attorneys' fees and costs as provided by Code of Civil Procedure § 1021.5 and all other applicable statutes; and

15. For such other and further relief the Court may deem just and proper.

Dated: August 9, 2021

Respectfully submitted,
STANBURY BROWN LAW

By: _____



Daniel J. Brown
Attorneys for Plaintiff

DEMAND FOR JURY TRIAL

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

Dated: August 9, 2021

Respectfully submitted,
STANBURY BROWN LAW

By:



Daniel J. Brown
Attorneys for Plaintiff